

**ZONING COMMISSION
OF PALM BEACH COUNTY**

Thursday, May 1, 2008
9:10 a.m. - 2:05 p.m.
Jane M. Thompson Memorial Chambers
301 North Olive Avenue
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer
Notary Public

A T T E N D E E S

Frank Barbieri, Jr., Chairman
Alexander Brumfield, III, Commissioner
Allen Kaplan, Commissioner
Sherry L. Hyman, Commissioner
Al Zucaro, Commissioner
Joanne Davis, Commissioner
Kelley Armitage, Alternate Commissioner
Richard Bowman, Alternate Commissioner

Barbara Alterman, Ex. Director of PZ&B

Bob Banks, Assistant County Attorney

Jon Mac Gillis, Zoning Director

Maryann Kwok, Chief Planner

Ora Owensby, Site Planner II, Zoning

Ron Sullivan, Senior Site Planner, Zoning

Carrie Rechenmacher, Senior Site Planner, Zoning

Douglas Robinson, Site Planner II, Zoning

Carol Glasser, Site Planner II, Zoning

Anthony Wint, Site Planner II, Zoning

Joyce Lawrence, Site Planner II, Zoning

D. G. McGuire, Site Planner II, Zoning

Isaac Hoyos, Principal Planner, Planning

Patrick Rutter, Chief Planner, Planning

Ken Rogers, Dir., Land Development Division

Allan Ennis, Asst. Dir. Traffic Division

Jim Choban, Land Development

Kenny Wilson, Health Department

Bob Kraus, ERM

Michael Owens, School Board Rep.

Donna Adelsperger, Zoning Tech, Zoning

Elizabeth Murray, Zoning Secretary

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P R O C E E D I N G S

CHAIRMAN BARBIERI: If everybody would please take their seats, we'll get started, please.

First thing I'd like to do is have Joanne Davis, our newest zoning commissioner, be sworn in by the County Attorney before we take roll.

Welcome, Joanne, to the Zoning Commission.

Mr. Banks, would you please swear in our new zoning commissioner.

(Whereupon, Commissioner Joanne Davis was sworn in by Mr. Banks.)

MR. BANKS: Thank you.

CHAIRMAN BARBIERI: Welcome.

Staff, would you please call roll.

MR. Mac GILLIS: Yes. Commissioner Bowman.

COMMISSIONER BOWMAN: Here.

MR. Mac GILLIS: Commissioner Armitage.

COMMISSIONER ARMITAGE: Here.

MR. Mac GILLIS: Commissioner Davis.

COMMISSIONER DAVIS: Here.

MR. Mac GILLIS: Commissioner Hyman.

COMMISSIONER HYMAN: Here.

MR. Mac GILLIS: Commissioner Barbieri.

CHAIRMAN BARBIERI: Here.

MR. Mac GILLIS: Commissioner Brumfield.

COMMISSIONER BRUMFIELD: Here.

MR. Mac GILLIS: Commissioner Zucaro.

COMMISSIONER ZUCARO: Here.

MR. Mac GILLIS: Commissioner Kaplan.

COMMISSIONER KAPLAN: Here.

MR. Mac GILLIS: We have a quorum.

CHAIRMAN BARBIERI: All right.

The record should reflect that we have six regular commissioners here today. Commissioner Anderson is absent. Commissioner Hyman will be acting as vice chair. Commissioner Armitage will be a voting commissioner, and Commissioner Bowman will not be voting unless we lose one of the regular commissioners.

Would everybody please stand for the opening prayer and the Pledge of Allegiance.

(Whereupon, the opening prayer and Pledge of Allegiance were given.)

CHAIRMAN BARBIERI: The Zoning Commission of Palm Beach County has convened at 9:10 a.m. in the Jane M. Thompson Memorial Chambers, 6th Floor, 301 North Olive Avenue, West Palm Beach, Florida, to consider applications for Official Zoning Map Amendments, Planned Developments, Conditional Uses, Development Order Amendments, Type II Variances and other actions permitted by the Palm Beach County Unified Land Development Code and to hear the recommendations of staff on these matters.

The Commission may take final action or issue an advisory recommendation on accepting, rejecting or modifying the recommendations of staff. The Board of County Commissioners of Palm Beach County will conduct a public hearing at 301

North Olive Avenue, West Palm Beach, Florida in the Jane M. Thompson Memorial Chambers, 6th Floor, at 9:30 a.m. on Thursday, May 22nd, 2008, to take final action on the applications we'll be discussing today. Zoning hearings are quasi-judicial and must be conducted to afford all parties due process. This means that any communication with commissioners which occurs outside of the public hearing must be fully disclosed at the hearing.

In addition, anyone who wishes to speak at the hearing will be sworn in and may be subject to cross-examination. In this regard, if any group of citizens or other interested parties wish to cross-examine witnesses, they must appoint one representative from the entire group to exercise this right on behalf of the group. Any person representing a group or organization must provide written authorization to speak on behalf of the group.

Public comment continues to be encouraged, and all relevant information should be presented to the Commission in order that a fair and appropriate decision can be made.

Staff, do we have proof of publication?

MR. Mac GILLIS: Yes, Mr. Chair.

CHAIRMAN BARBIERI: We need a motion to receive and file.

COMMISSIONER HYMAN: So moved.

CHAIRMAN BARBIERI: Motion made by Commissioner Hyman, second by Commissioner --

COMMISSIONER KAPLAN: Kaplan. Second.

CHAIRMAN BARBIERI: -- Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

Those of you who wish to the commission today would you please stand and be sworn in by the Assistant County Attorney.

(Whereupon, speakers were sworn in by Mr. Banks.)

MR. BANKS: Thank you.

CHAIRMAN BARBIERI: All right. Those commissioners who've had contact with petitioners or other people with respect to any of the petitions today would you please make your disclosures on the record, starting with Commissioner Bowman.

COMMISSIONER BOWMAN: No.

CHAIRMAN BARBIERI: None? Commissioner Armitage.

COMMISSIONER ARMITAGE: No disclosures.

CHAIRMAN BARBIERI: Commissioner Davis.

COMMISSIONER DAVIS: None.

CHAIRMAN BARBIERI: Commissioner Hyman.

COMMISSIONER HYMAN: I met with petitioner's representatives on Items 6, 12, 25 and 28 and had a -- I think a phone conversation

from an opposing person on 28.

CHAIRMAN BARBIERI: Same for me, 6, 12, 25, 28.

Commissioner Brumfield.

COMMISSIONER BRUMFIELD: I've met with the representatives on Items 6 and 28.

CHAIRMAN BARBIERI: Commissioner Zucaro.

COMMISSIONER ZUCARO: No disclosures.

CHAIRMAN BARBIERI: Commissioner Kaplan.

COMMISSIONER KAPLAN: I met with Petitioner's agents on Items 6, 12, 24, 25 and 28.

CHAIRMAN BARBIERI: Okay. That brings us to postponements.

MR. Mac GILLIS: Postponements begin on Page 2 of your agenda, Item 1, ZV2008-089, Westgate Station, postponed -- that's 30 days or 60?

CHAIRMAN BARBIERI: It says 60.

MR. Mac GILLIS: Sixty days to July 3rd, 2008.

CHAIRMAN BARBIERI: We need a motion for this?

MR. Mac GILLIS: Yes.

COMMISSIONER HYMAN: So moved.

CHAIRMAN BARBIERI: Is there anybody here to speak on Item No. 1, ZV2008-089?

(No response)

COMMISSIONER KAPLAN: Mr. Chairman, not seeing any members of the public wishing to speak in opposition, I move to postpone Z2008-089, 60 days to July 3rd, 2008.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan.

COMMISSIONER HYMAN: Second.

CHAIRMAN BARBIERI: Second by Commissioner Hyman.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Next item is two, PDD2006-1682, 112th/Northlake Office, postponed 30 days to Thursday, June 5th, 2008.

CHAIRMAN BARBIERI: Is anyone here today to speak on PDD2006-1682?

(No response)

COMMISSIONER KAPLAN: I'll move to postpone said item to June 5th, 2008.

COMMISSIONER HYMAN: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, seconded by Commissioner Hyman.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Item 3, DOA/R2007-1597, Pratt and Orange MUPD, postponed for 30 days to June 5th, 2008.

CHAIRMAN BARBIERI: Any member of the public here to speak on DOA/R2007-1597?

(No response)

COMMISSIONER KAPLAN: I'll move to postpone this item to Thursday, June 5th, 2008.

COMMISSIONER HYMAN: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, seconded by Commissioner Hyman.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Page 3 of your agenda, Item 4, ABN/PDD2007-728, Tidal Wave Industrial Park, postponed 30 days to June 5th, 2008.

CHAIRMAN BARBIERI: Anybody here to speak on ABN/PDD2007-728?

(No response)

COMMISSIONER KAPLAN: I move to postpone said item to June 5th, 2008.

COMMISSIONER HYMAN: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan, second by Commissioner Hyman. Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Then we go to -- we have one item -- two items for withdrawal.

Item 5, Z/CA/TDR2006-1914, the Residences of Haverhill.

No motion's required, and --

CHAIRMAN BARBIERI: All right. Is anybody here to speak on Item 5? That's being withdrawn. Is there anybody here for that?

(No response)

CHAIRMAN BARBIERI: Okay.

MR. Mac GILLIS: Item 24, found on Page 12 of your agenda, ZV2007-2016, Marquez-Jones PUD, postponed -- or withdrawn.

We don't need a motion.

CHAIRMAN BARBIERI: All right. Is any -- that one -- if anybody's here for Item 24, it's being withdrawn.

Okay.

MR. Mac GILLIS: Okay. That'll bring us to Page 4 of your agenda, the consent agenda. Item 6, staff has requested this item be pulled, and we put it on your consent agenda. The reason we're requesting this to be pulled, this is the first item in the Westgate Overlay since we amended the ULDC to adopt new regulations for a form-based code in the master plan, and since there's a significant number of variances on here, even though the applicant agrees and staff is in agreement with the recommendation for approval, we thought it would be beneficial to show this first project to the Board because of the number of variances.

MR. Mac GILLIS: So that will bring us to Item 7, Z2007-1180, Nokomis Lofts, Page 69 through 91.

Staff is recommending approval, subject to 13 conditions, and there's a motion, and on the add and delete there's a change to the motion to include a COZ.

We'd ask the applicant to come to the podium to agree to the conditions and state their name.

CHAIRMAN BARBIERI: Is the applicant here? Item No. 7?

MR. KIER: Yes. Good morning. David Kier, Seminole Bay Land Company, here representing Eastern Asset Management, for Nokomis Lofts.

CHAIRMAN BARBIERI: All right. Do you agree to all the conditions staff is recommending?

MR. KIER: Yes.

CHAIRMAN BARBIERI: All right.

Is there anybody here to speak on Item Z2007-1180?

(No response)

CHAIRMAN BARBIERI: All right. We need a motion. We need a motion.

COMMISSIONER HYMAN: I move for approval of the official zoning map amendment from Residential High zoning to General Commercial Zoning District, subject to all the conditions.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: With the COZ. There's a -- on the add/delete sheet there's an addition to that motion.

COMMISSIONER HYMAN: Yeah, as amended.

CHAIRMAN BARBIERI: All right. Motion was made by Commissioner Hyman, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. KIER: Thank you.

MR. Mac GILLIS: Brings us to Page 5, Item 5, Item 8, DOA/R2007-1428, Chick-Fil-A, found on Pages 98 [sic] through 118.

Staff is recommending approval, subject to 34 conditions found on Page 109 through 113.

There are two motions on this item.

CHAIRMAN BARBIERI: Right.

MR. Mac GILLIS: We'd ask the applicant to come to the podium.

MR. McDONALD: Good morning. Craig McDonald, on behalf of chick-Fil-A.

CHAIRMAN BARBIERI: Do you agree to all the conditions?

MR. McDONALD: We do.

CHAIRMAN BARBIERI: All right.

Is there anybody here to speak on Item No. 8, DOA/R2007-1428?

(No response)

CHAIRMAN BARBIERI: All right.

COMMISSIONER HYMAN: Move approval of the Development Order Amendment to reconfigure the site plan, add square footage.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Any discussion on the motion?

(No response)

CHAIRMAN BARBIERI: Motion was made by **Commissioner Hyman**, second by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: Move approval of the residential -- the requested use to allow a Type I restaurant, subject to all the conditions as modified.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion again made by **Commissioner Hyman**, second by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Item 9, ZV/CA2007-739, Bob's Auto Glass, found on Page 119 through 147. Staff is recommending approval, subject to 14 conditions found on Pages 136 through 138.

There are two motions on this item.

CHAIRMAN BARBIERI: Petitioner.

MR. CARLSON: Yes, sir.

CHAIRMAN BARBIERI: Good morning.

MR. CARLSON: Good morning. Richard Carlson, representing Tuller Properties.

The conditions are acceptable.

CHAIRMAN BARBIERI: All right. Is there anybody here to speak on Item No. 9, ZV/CA2007-739?

(No response)

COMMISSIONER HYMAN: Move approval of the resolution approving a Type II zoning variance to allow the reduction of the required right-of-way buffer for Military Trail, allow the reduction of the right-of-way buffer for Childs Street and Cross Street, allow the reduction of the number of shrubs for Childs Street and Cross Street and allow the reduction of landscape island widths.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Hyman, second by Commissioner Kaplan. Discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: Move approval of the Class A condition use to allow the repair and maintenance, general and dispatching over four vehicles, subject to all the conditions as modified.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Hyman, second by Commissioner Kaplan. Discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.
COMMISSIONERS: Aye.
CHAIRMAN BARBIERI: Opposed.
 (No response)
CHAIRMAN BARBIERI: Motion carries, 7-0.
MR. CARLSON: Thank you.

MR. Mac GILLIS: On Page 6, Item 10, DOA2007-1005, Whiteside Industrial Park, found on Page 148 through 168.

Staff is recommending approval, subject to 17 conditions and as modified on the add and delete.

There's one motion on this item.
We had one letter of support.

MS. BRINKMAN: Good morning. Joni Brinkman, with Kilday and Associates, on behalf of the Whiteside Group.

We're in agreement with all the conditions of approval and those included on the add/delete.

There were some Traffic revision conditions that were made late in the day on Tuesday that did not make it to the add/delete.

I would propose that the add/delete will be -- that staff report will be amended prior to BCC to reflect the replacement of the existing Engineering conditions with these.

I have handouts for the Commission if they'd like to see them, or I can read them into the record.

CHAIRMAN BARBIERI: Engineering, what would you --

MR. CHOBAN: Those changes were made too late to make the add and delete, so Traffic has reviewed it, and we will be amending the condition.

CHAIRMAN BARBIERI: All right.

MR. CHOBAN: It's for the phasing conditions.

CHAIRMAN BARBIERI: Okay.

Is there anybody here to speak on Item No. 10, DOA2007-1005?

(No response)

COMMISSIONER HYMAN: I move for approval of Development Order Amendment to modify a condition of approval, building and site design, restart the commencement clock and approve a vinyl-coated chainlink fence within the perimeter buffer, subject to all the conditions as modified.

COMMISSIONER KAPLAN: Seconded.

CHAIRMAN BARBIERI: Motion made by

Commissioner Hyman, second by Commissioner Kaplan.
 Discussion?
 (No response)
CHAIRMAN BARBIERI: All in favor.
COMMISSIONERS: Aye.
CHAIRMAN BARBIERI: Opposed.
 (No response)
CHAIRMAN BARBIERI: Motion carries, 7-0.
MS. BRINKMAN: Thank you.

MR. Mac GILLIS: Item 11, Z/CA/TDR2007-1621, Cole Street Villas.

I think staff -- found on Page 168 [sic] through 192.

Staff is recommending approval of three motions, subject to 16 conditions.

There were no letters of support or -- are there?

MS. KWOK: Yeah, as of this morning we have a letter coming from the mayor of the Town of Haverhill, and I believe this lady is coming with that letter.

CHAIRMAN BARBIERI: All right. We have cards, also, so we're going to pull this and put it on the regular agenda.

MR. Mac GILLIS: Okay. That'll bring us to Item 12 on Page 7, CA2007-1790, Bedner Produce Stand, found on Page 193 through 221.

Staff is recommending approval of a motion for a Class A conditional A, subject to 12 conditions found on Page 211 through 213.

There were no letters on this, and there are add and delete conditions.

MR. BROPHY: Good morning. Jeff Brophy, with Land Design South, agent for the applicant.

We're in agreement with all the conditions, both listed in the staff report and the add/delete.

CHAIRMAN BARBIERI: All right. Is there

anybody here for Item 12, CA2007-1790?

(No response)

COMMISSIONER HYMAN: I'm going to move approval of the Class A conditional use to allow a produce stand.

COMMISSIONER KAPLAN: Second.

COMMISSIONER HYMAN: Under discussion.

There's -- the sign condition, I know that you're going to make a sign -- your sign's going to be a lot smaller than the code, but there's no sign conditions that limit it to the sign that you're proposing.

So can we just add that sign condition, just limiting it to the sign that they're proposing, as opposed to what the code would allow.

MS. KWOK: The sign conditions, it's -- yeah, we can agree to that on the State Road 7 sign.

COMMISSIONER HYMAN: Yeah, right.

MS. KWOK: That's fine.

MR. BROPHY: That's fine.

CHAIRMAN BARBIERI: Mr. Brophy, you agree to that?

MR. BROPHY: Yeah, that's fine.

COMMISSIONER HYMAN: The motion stands, subject to all those conditions as modified.

CHAIRMAN BARBIERI: The motion was made by **Commissioner Hyman**.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Seconded by **Commissioner Kaplan**.

Is there any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: The next item is 13, Z2007-2004, Osorio Rezoning, found on Pages 222 through 243.

Staff is recommending approval, subject to one motion, five conditions.

There were no letters, and there is an amendment on the add and delete for conditions and the motion for this item.

CHAIRMAN BARBIERI: Is the petitioner here?

(No response)

COMMISSIONER HYMAN: Not here?
CHAIRMAN BARBIERI: Kilday and Associates,
do you have a representative here on this?
(No response)
CHAIRMAN BARBIERI: I'm sorry. It's
not -- is it Kilday?
MR. Mac GILLIS: Is it?
CHAIRMAN BARBIERI: No, it's not. It's
Carlos Osorio, Land Research Management.
MR. Mac GILLIS: Kevin McGinley.
COMMISSIONER HYMAN: Kevin -- he could be
stuck in traffic.
CHAIRMAN BARBIERI: All right. Let's move
this to the end of the consent agenda.
MR. Mac GILLIS: Okay.

MR. Mac GILLIS: Item 14, ZV/SV/DOA2008-
092, WFLX Tower Site, found on Page 244 through
273.

Staff is recommending approval of three
motions, subject to six conditions found on Pages
260 through 261.

There was one letter of opposition, and I
believe staff has had recent calls from the
adjoining subdivision, Homeland.

So I'm not sure if there's anyone here in
the audience to speak to this.

CHAIRMAN BARBIERI: Yeah, there is --
there are.

MR. Mac GILLIS: Oh.

CHAIRMAN BARBIERI: There is.

Could the gentleman from Homeland come up
to the podium, please?

COMMISSIONER HYMAN: He wants a
postponement.

CHAIRMAN BARBIERI: State your name,
please, for the record.

MR. ANNUNZIATA: Steve Annunziata.

CHAIRMAN BARBIERI: What is the reason
you're asking for a postponement on this?

MR. ANNUNZIATA: Well, we wanted -- we
don't think we've been given proper notice, and we
wanted time to consult our attorney because part
of this request is to allow legal access from an
easement, and even though, you know, everybody has
explained to me that probably nothing changes with
our main road and our security system, the road
has been turned over private to us since these
agreements.

And we just want to consult legal counsel.

CHAIRMAN BARBIERI: All right. Well,

let's pull this on the -- let's put this on the regular agenda.

We're going to -- we're going to pull it off consent. We'll discuss it on the regular agenda today.

MR. ANNUNZIATA: Thank you.

MR. Mac GILLIS: That will bring us to Page 8 of your agenda, Item 15, ZV/DOA/R2008-094, Shoppes of Sherbrook, Pages 274 through 313.

Staff is recommending approval, subject to 48 conditions, and there are three motions on this.

There are add and delete conditions.

There were four letters of -- there's three for support and one for denial with no reason.

CHAIRMAN BARBIERI: With no reason? No reason?

MR. Mac GILLIS: No reason.

CHAIRMAN BARBIERI: Okay.

MS. WALTER: Good morning Commissioners. Collene Walter, with Kilday and Associates, here today on behalf of Slabrage Group, LLC.

We are in agreement with all the conditions, including those included on the add/delete memo.

CHAIRMAN BARBIERI: All right. Is there anybody here to speak on Item 15, ZV/DOA/R2008-094?

(No response)

COMMISSIONER HYMAN: Move approval of the resolution approving a Type II Zoning Variance to allow the 24-hour operation adjacent to residential.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion made by **Commissioner Hyman**, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: Move approval of the Development Order Amendment to reconfigure the site plan, modify the uses, modify conditions of approval, delete square footage --

COMMISSIONER KAPLAN: Second.

COMMISSIONER HYMAN: -- subject to all the conditions.

CHAIRMAN BARBIERI: Motion made by Commissioner Hyman, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: Move approval of the requested use to allow the fitness center, subject --

COMMISSIONER KAPLAN: Second.

COMMISSIONER HYMAN: -- to all the conditions.

CHAIRMAN BARBIERI: Motion again made by Commissioner Hyman, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MS. WALTER: Thank you, Commissioners.

CHAIRMAN BARBIERI: You're welcome.

MR. Mac GILLIS: Item 16, ZV/Z/CA2008-097, American Red Cross, found on Page 314 through 347, subject to -- staff is recommending approval, subject to 21 conditions on Page 331 through 334 and as on the add and delete.

Also, there's an amendment to the motion on the add and delete to add a COZ.

There were three letters for denial, once again, no reason why.

MR. MILLER: Good morning, Commissioners.

Bradley Miller, from Miller Land Planning Consultants, representing the applicant.

We're in agreement with the conditions, including the add/delete.

CHAIRMAN BARBIERI: All right. Is there anybody here on Item 16, ZV/Z/CA2008-097?

(No response)

COMMISSIONER HYMAN: Move approval of a resolution approving a Type II Zoning Variance to allow a reduction in the required parking,

subject --

COMMISSIONER KAPLAN: Second.

COMMISSIONER HYMAN: -- to conditions.

CHAIRMAN BARBIERI: Motion made by

Commissioner Hyman, second by Commissioner Kaplan.

Is anybody else here today?

Is there any discussion on the motion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: Move approval of an official zoning map amendment rezoning from the Single Family Residential Zoning District to the General Commercial Zoning District, subject to the conditions.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion made by

Commissioner --

MR. Mac GILLIS: That motion was amended on the add and delete to include a COZ.

COMMISSIONER HYMAN: Subject to the conditions as amended.

MS. KWOK: Right.

CHAIRMAN BARBIERI: Motion made by

Commissioner Hyman, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: I move approval, the recommendation to approve the Class A conditional use to allow an assembly, non-profit institute, subject --

COMMISSIONER KAPLAN: Second.

COMMISSIONER HYMAN: -- to conditions as modified.

CHAIRMAN BARBIERI: Motion made by

Commissioner Hyman, second by Commissioner Kaplan.

Discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: That brings us to Page 9 of your agenda, Item 17, ZV2008-435, Park Vista Place, Pages 348 through 369.

Staff is recommending approval, subject to five conditions found on Page 359.

There were eight letters, five opposed, three support. Once again, no reason why they're opposing or supporting.

MR. MILLER: Good morning, Commissioners. For the record, Bradley Miller, Miller Land Planning Consultants, representing the applicant.

We're in agreement with the conditions.

CHAIRMAN BARBIERI: All right. Is there anybody here to speak on Item 17, ZV2008-435?

(No response)

COMMISSIONER HYMAN: Move approval of the resolution approving a Type II Zoning Variance to allow a reduction to the side setback and to eliminate trees in two parking terminal islands, subject to --

COMMISSIONER KAPLAN: Second.

COMMISSIONER HYMAN: -- the conditions.

CHAIRMAN BARBIERI: Motion made by Commissioner Hyman, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. MILLER: Thank you.

MR. Mac GILLIS: Item 18, ZV2008-460, Seminole Orange Plaza, Pages 370 through 391.

Staff is recommending approval, subject to two conditions found on 381.

There's one motion on this item.

There was one letter for denial stating they -- we don't need any more shopping centers.

MS. WALTER: Good morning, Commissioners.

Collene Walter, with Kilday and Associates, here on behalf of Loxahatchee Venture, LLC.

We are in agreement with the two conditions of approval that are placed on this variance.

Thank you.

CHAIRMAN BARBIERI: Is there anybody here to speak on Item 18, ZV2008-460?

(No response)

COMMISSIONER HYMAN: Move approval of a resolution approving a Type II Zoning Variance to allow the reduction in the required pervious surface subject --

COMMISSIONER KAPLAN: Second.

COMMISSIONER HYMAN: -- to the conditions.

CHAIRMAN BARBIERI: Motion made by Commissioner Hyman, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MS. WALTER: Thank you, Commissioners.

MR. Mac GILLIS: Item 19, ZV2008-465, the Mattison Residence Variance, Pages 392 through 415.

Staff is recommending approval of this Type II variance subject to five conditions found on Page 403.

There were two letters of support.

COMMISSIONER HYMAN: Should we hear this one together with 20, 21, 22, and 23? Are they -- aren't they all related?

MR. Mac GILLIS: No, I think the next ones are.

CHAIRMAN BARBIERI: We have probably --

MR. Mac GILLIS: Twenty.

CHAIRMAN BARBIERI: -- 15 cards here.

Fourteen of them are from people that are in support of this, and I have one person that opposes it.

COMMISSIONER HYMAN: He's the petitioner.

MS. KWOK: That's right.

MR. Mac GILLIS: Okay. You're right. I'm sorry. You were right, yes.

COMMISSIONER HYMAN: They are related.

MR. Mac GILLIS: They're all -- these are all related to the Jonathan's Landing PUD.

COMMISSIONER HYMAN: Right.

MS. KWOK: Nineteen through 23.

COMMISSIONER HYMAN: Twenty-three.

MS. KWOK: Yeah.

CHAIRMAN BARBIERI: Okay.

COMMISSIONER HYMAN: So these cards are all --

CHAIRMAN BARBIERI: They're all -- they're

for all of them.

COMMISSIONER HYMAN: I mean we'll take the motions separately, but we can hear them together, right?

CHAIRMAN BARBIERI: Right.

COMMISSIONER HYMAN: Is there a petitioner?

CHAIRMAN BARBIERI: Petitioner.

MR. CARPENTER: Jay Carpenter, Carpenter General Contractors, representing Joan Mattison, the petitioner.

We do agree with all of the conditions.

CHAIRMAN BARBIERI: Okay.

COMMISSIONER HYMAN: See if there's anybody here.

CHAIRMAN BARBIERI: Is there anybody here on Item 19 that is in opposition to this?

(No response)

CHAIRMAN BARBIERI: All right. So I have a bunch of cards from people that are supporting this, so unless you all want to speak, we're prepared to move forward on this and approve it.

So does anybody wish to speak that's submitted cards on 19?

(No response)

CHAIRMAN BARBIERI: All right. We're ready for a motion.

COMMISSIONER HYMAN: Move approval of the resolution approving a Type II zoning variance to allow the replacement of a zero lot line with a larger unit and a reduction of the rear setback, subject to the conditions.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: All right. Motion was made by Commissioner Hyman, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Item 20, ZV2008-466.

This is Lot 17 in Baytown, which is part of the Jonathan's Landing PUD.

Staff is recommending approval of this Type II variance, subject to five conditions.

CHAIRMAN BARBIERI: All right. I have the same cards again.

Is there anybody here that wishes to speak on this item?

(No response)

COMMISSIONER HYMAN: Move approval of the resolution approving a Type II Zoning Variance to allow the replacement of a zero lot line with a larger unit, subject to the conditions.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Mr. Carpenter.

MR. CARPENTER: Yes. Jay Carpenter, Carpenter General Contractors, representing myself, and do agree with all the conditions.

CHAIRMAN BARBIERI: Okay. Great. Why don't you just stay there, I guess, for the next couple.

All right. We had a motion.

Motion was made by **Commissioner Hyman**, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. Mac GILLIS: Item 21, ZV2008-467. Staff is recommending approval of this variance, subject to five conditions.

There were seven letters on this item, five recommending denial, saying the units are too large and not consistent with the rest of the development, two supporting it.

CHAIRMAN BARBIERI: All right.

Mr. Carpenter, you agree with the conditions on this one, also?

MR. CARPENTER: Yes. Jay Carpenter, again, Carpenter General Contractors.

We do agree with the conditions.

CHAIRMAN BARBIERI: Mr. Prout, are you here?

MR. PROUT: Good morning. My name is Robert Prout.

I live in one of the units adjacent to this application. I live in the unit north of the Handley (ph) residence.

Incidentally, I never received a notice of this meeting. I checked with the people over at the desk, and they claim that I'm not on the tax rolls, which surprises me 'cause I've been paying taxes for the last 10 years on the house, but that's another item.

I have here a petition signed by 15 of our residents at Baytown opposing this resolution.

CHAIRMAN BARBIERI: All right. Mr. Prout, what we're going to do is we're going to pull this off consent, and we're going to hear it on the regular agenda.

So if you would -- we'll call you back up in a short while when we get back to it, if you would stick around.

MR. PROUT: Yes, sir.

MR. Mac GILLIS: Next item is 22, ZV2008-468. Staff is recommending approval of this variance --

COMMISSIONER HYMAN: I'm going to ask that 22 and 23 both be pulled from the consent to the regular agenda. We'll hear all three together.

MR. CARPENTER: And Jay Carpenter again, Carpenter General Contractors.

We do agree with all of the conditions on 22 and 23.

CHAIRMAN BARBIERI: Okay. Thank you.

COMMISSIONER HYMAN: Regular agenda.

CHAIRMAN BARBIERI: That takes us to the --

MR. Mac GILLIS: Well, we have Item 26 that's on the add and delete --

CHAIRMAN BARBIERI: Okay.

COMMISSIONER HYMAN: What's that?

MR. Mac GILLIS: -- which was moved to the consent.

That's DOA/TDR2007-1400, Haverhill Acres.

Staff is recommending approval of this request, subject to two motions.

And this doesn't say how many conditions.

How many conditions?

CHAIRMAN BARBIERI: Good morning.

MR. IRAVANI: Good morning. Jeff Iravani, JHI Consulting, on behalf of the owner.

CHAIRMAN BARBIERI: Do you agree to all the conditions staff is recommending?

MR. IRAVANI: We're in agreement with all the conditions, yes, sir.

CHAIRMAN BARBIERI: Mr. Brandenburg, Howard Brandenburg, you submitted a card that you're in opposition, is this correct, on Item No. 26? You're in opposition? Yes? Okay.

You can't speak from back there --

COMMISSIONER HYMAN: Let's keep this on the regular agenda then.

CHAIRMAN BARBIERI: Yeah, we're going to keep it on the agenda, so stick.

MR. Mac GILLIS: Okay. So that takes us back to the first item pulled off the consent.

CHAIRMAN BARBIERI: Yes, it does, which is No. 6, I guess. Is that correct?

MS. KWOK: Westgate One.

MR. Mac GILLIS: Westgate One. This is ZV2006-1617, Westgate One, Pages 6 through 68.

Staff is recommending approval of this variance.

As I stated earlier, this is one of the first variances for a large project coming in in the Westgate CRA district.

The Zoning staff, with the assistance of Westgate CRA staff last year recommended significant amendments to the ULDC to accommodate the proposed master plan vision for the area.

This is one of the first projects coming through. Most of the variances are related to the parking garage that's proposed on this site.

And what you're going to see, these are more dense urban projects than the County is used to seeing.

The applicant has justified the seven criteria in order for staff to support this variance.

So D.G. McGuire will give us a brief presentation on this, then the applicant will also give us a presentation.

MR. McGUIRE: Good morning, Commissioners. D.G. McGuire, for the record.

Before you today is a request for 28 Type II variances for a proposed six-story mixed use project located within the Westgate Community Redevelopment Overlay.

The subject property is bound to the north by Westgate Avenue, to the south by Nokomis Avenue and is mid-block between Wasabo Drive and

Tallahassee Drive.

The 28 Type II variances are requested to permit the reduction or elimination of front and side setbacks, pervious area, building coverage, multiple buffer requirements, the build-to line setbacks, the arcades and galleries.

The proposal includes 7,938 square feet of retail space for the first floor, 8,621 square feet for the office space on the second floor, 52 condominium units on the third through sixth floors, with 19 of those units being workforce housing units, and a two-story parking structure to the south of the primary structure.

I've prepared a brief PowerPoint presentation concerning the proposed variances.

The proposed six-story building has current future land use of Commercial High 8 --

CHAIRMAN BARBIERI: Can you either speak closer to the microphone or pick up the hand-held mic?

MR. McGUIRE: How about this one?

CHAIRMAN BARBIERI: Great. Thank you.

MR. McGUIRE: Better?

CHAIRMAN BARBIERI: Great.

MR. McGUIRE: Has a current zoning of CG and CN. It's within the Urban-Suburban Tier Westgate CRA and the URA and is approximately 99 -- 0.99 acres.

The proposed is a six-story mixed use building with an attached two-level parking garage, almost 8,000 square feet of retail, a little over 8,000 of office, and, again, 52 units, 19 of which are workforce housing units.

There are a number of residential properties located around the proposed development, and access is off Nokomis to the south.

The variances -- if we can just scroll through these quickly, there's -- the first group has to do with setbacks, and you'll see here on the next slide the additional three-foot for the first and second stories is located along Westgate.

The next one has to do with an additional six-foot for the third floor, which is also required to be at that build-to line, and the last one is to eliminate the top floors from having the sky plane exposure, the required sky plane exposure.

The next group -- or, excuse me, the rest of this group has to do with setbacks for the parking garage along the east, all the other setbacks, the side setbacks. Okay.

The next group has to do with once those setbacks are reduced, all the buffer requirements, the planting requirements, associated with it need to be reduced, as well.

So when we scroll through these, you'll see -- oh, excuse me, that's the right-of-way buffer, and then the rest are the buffers that were previously discussed.

And then the last group has to do with

once those things are reduced, things like pervious area and building coverage are affected.

So let me read through them very quickly.

Variance one is associated with the setback for the building frontage facing Westgate.

The property is located within the NC sub-district of the Westgate Community Redevelopment Overlay.

Front setbacks for this sub-area are established at the build-to line. In this case the build-to line is established at 10 feet from the property line. The applicant has requested an additional three-foot setback for maintenance purposes.

Variance No. 2 is associated with the setback for the third floor. The first three floors are required to meet the build-to setback.

The applicant is requesting an additional setback that allows the third through the sixth floors to align and create a continuity in form.

Variance No. 3 is associated with the sky plane exposure. The applicant has aligned the top four floors and stepped them back six feet from the required setback.

The architect for the project stated that the costs associated with stepping the building back on the top two floors, as required by the ULDC, is cost-prohibitive.

Variance 5 through 8 are associated with side and rear setbacks for the parking garage. Due to the maneuverability requirements of the parking garage and the parking requirements, a buffer width reduction became necessary.

Variance 11 and 12 are associated with the elimination of the right-of-way buffer along Westgate, the irregular shape of the lot, as well as the physical constraints associated with the parking garage necessitate the proposed variance.

Variance 13 through 28 are associated with the reduction of the buffers along the side and rear of the property. Again, as the applicant has proposed, a five-foot wide buffer, the survivability of multi-tiered shrubs and shade trees has come into question.

The applicant is requesting deletions in width, the required walls, the tiered plantings and the maximum palm percentages

Variance 4 is associated with arcades and galleries. The applicant has requested relief from this section of the ULDC as the site layout limits the amount of available commercial and office space.

Additionally, the maneuverability requirements of the parking garage further constrain the allowable square footage. Providing an arcade, a gallery along Westgate would further this reduction.

Variance 9 and 10 are associated with building lot coverage and pervious area. The ULDC requires a 20 percent pervious area, and the proposed plan indicates 12.

The lot coverage is allowed at 60 percent

by the ULDC and proposed at 78. Both variances in the -- are in -- consistent with the development that they're proposing.

The variance requests are in compliance with Article 2, Section 2.D.E of the ULDC, and are subject to six conditions as noted on Page 26.

A subsequent application has been submitted for the conditional use.

Commissioner, this concludes my presentation.

If you have any questions, be glad to answer them; otherwise, I think Jeff has a presentation he'd like to do.

MR. BROPHY: Thank you, D.G.

For the record, Jeff Brophy, with Land Design South.

I'm not as tall. I don't need that.

The -- I'll try to stay brief. I have a lot of the same points as D.G. so I'll skip over them quickly if I can.

CHAIRMAN BARBIERI: I have a question for staff before Jeff presents.

Jon, what -- why do we want to treat -- just for our own -- and especially the newer commissioners, and I don't know.

Why do we want to treat this area differently than other areas in the County, the Westgate area?

Can you kind of give us a summary of why we're -- we would want to do all these variances in this particular area?

MR. Mac GILLIS: The Comprehensive Plan identifies various areas throughout the County that have different density intensity or unique characteristics.

The Westgate area has been identified for probably 20-some years in the zoning code and the Comprehensive Plan as an area needing infill and redevelopment. It's one of the oldest parts of the County, a lot of infrastructure's not there.

The new regulations that we recently adopted were to encourage a new type of growth there, for infill redevelopment. It focused primarily on the Westgate Avenue and some of the side streets. It allowed for increase in density and mixed use that's not allowed in other parts of the County.

It also -- we had concurrency for -- related to traffic was reduced through planning text amendments, as well, to encourage people to redevelop that area.

So this is one of the first projects you're seeing coming in that's a mixed use. We don't have many of those in the unincorporated area so they're -- it's -- unfortunately, the first one that comes through, we're massaging the code and the developer is in here and trying to do a good project.

So a lot of the variances were in support because they're minor in nature and will allow this project to move forward and help the redevelopment of that area, the overall goal of

the Board.

CHAIRMAN BARBIERI: All right. Great.

Thanks.

Any of the commissioners have a question for Jon?

COMMISSIONER ZUCARO: I do.

CHAIRMAN BARBIERI: Commissioner Zucaro.

COMMISSIONER ZUCARO: Jon, was it your --

CHAIRMAN BARBIERI: Turn your microphone on.

COMMISSIONER ZUCARO: I'm sorry. Was it your recommendation earlier that we post -- pull this and send it to the County Commission because of all the reasons that you stated?

MR. Mac GILLIS: No. I -- staff had put it on the consent agenda, and I realized yesterday when I went through the agenda. I would have left it on the regular agenda just to give you a presentation on it because of the magnitude of the number of variances, and this is one of the first projects to come in in Westgate under the new master plan and new code amendments. So I --

COMMISSIONER ZUCARO: So you want us to act on it today?

MR. Mac GILLIS: Well, the variances, you are the Board that acts on them.

The Board of County Commissioners will not see these variances. If you approve them today, you're the final decision-making body.

They will see the conditional use application if you grant these variance today it'll allow the application to proceed.

COMMISSIONER ZUCARO: Thank you very much.

COMMISSIONER HYMAN: I'm going to move approval.

Did you finish -- oh, you're still --

CHAIRMAN BARBIERI: He just started.

MR. BROPHY: It's -- I guess it's really up to the pleasure of the Board whether --

COMMISSIONER HYMAN: He had such a comprehensive --

MR. BROPHY: Okay.

CHAIRMAN BARBIERI: Is there anything you want to add that he didn't --

MR. BROPHY: No. No, that's fine. If there's any questions, I'd be happy to answer them.

CHAIRMAN BARBIERI: Okay.

COMMISSIONER ZUCARO: I'm going to second the motion, and I have a comment that I'd like to make.

CHAIRMAN BARBIERI: All right.

COMMISSIONER HYMAN: I need to move --

CHAIRMAN BARBIERI: Make the motion.

COMMISSIONER HYMAN: Yeah. Move for approval of the resolution approving a Type II Zoning Variance to allow a deviation from the build-to build line, a reduction for the rear and side setbacks, to increase the building coverage, to eliminate the sky exposure plane, to eliminate the arcade/galleries, to reduce pervious area, to eliminate side foundation plantings, to eliminate

right-of-way buffer, to eliminate walls within the incompatibility buffers, to increase the percentage of palms, to reduce the amount of landscape plant materials and reduce the incompatible buffer widths.

These requests for variance, there are special conditions, circumstances do exist that are peculiar to this parcel of land that are not applicable to other parcels that warrant the variances. Special circumstances and conditions that do not result from the actions of the applicant.

The granting of the variance does not confer upon the applicant any special privileges denied by the Comp Plan, the code, to other parcels of land.

And the granting of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

And the literal interpretation and enforcement of the terms and provisions of the code would deprive the applicant of rights commonly enjoyed by other parcels, and granting the variance will be consistent with the purposes, goals and objectives and policies of the Comp Plan and the code.

And the granting of the variance is the minimum variance that would make possible the reasonable use of the property.

CHAIRMAN BARBIERI: All right.

Commissioner Zucaro.

COMMISSIONER ZUCARO: Second.

CHAIRMAN BARBIERI: Second by Commissioner Zucaro.

COMMISSIONER ZUCARO: And I just have one discussion point.

We're a fact-finding body, and the staff and the applicant present us with the facts, and we ultimately make a decision based upon those facts.

I think that this meets those criteria so I support it, and I'm seconding it.

But I just want to make a statement in terms of my own belief as to how we should act as a body and then individually.

This is a wonderful project. It supports public policy that has been coming forward over years now from the County Commission and from staff in terms of the redirection of development to an infill kind of philosophy, versus an urban expansion kind of philosophy. And I think the issue of predictability of our actions and those actions of other bodies, including the County Commission, are of great importance.

So I think that there is a public policy statement that's been made by the County Commission and supported by staff for infill redevelopment, and I think that this application is a wonderful exercise of that policy, and I, as a Zoning Commissioner, support it from both a technical fact-finding point of view, and then individually as a voice on the Zoning Commission

in support of the policy that it -- that underlies the entire premise for infill redevelopment.

CHAIRMAN BARBIERI: Thank you. Is there anybody here to speak on Item 6?

(No response)

CHAIRMAN BARBIERI: All right.

We have a motion on the floor by

Commissioner Hyman, seconded by Commissioner Zucaro.

Any discussion?

Yes, ma'am. Commissioner Davis.

COMMISSIONER DAVIS: Just for the record I would like to say that I am very much in support of infill and redevelopment and support the project.

CHAIRMAN BARBIERI: All right. Any other comments?

(No response)

CHAIRMAN BARBIERI: All in favor of the motion.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. BROPHY: Thank you.

MR. Mac GILLIS: That will bring us to Item 11, Z/CA/TDR2007-1621, Cole Street Villas, found on Page 169 through 192.

Staff is recommending approval of this item, subject to 16 conditions.

Anthony Wint will do a brief presentation on this item.

MR. WINT: Good morning, Commissioners.

Anthony Wint, Planner II, Zoning Division.

Proposed is the rezoning of 1.42 acres of land in the Residential High Density Zoning District to the Residential Multi-family Zoning District.

Also proposed is a Class A conditional use to designate this application as a receiving area for the transfer of development rights for five units.

These units will be deeded -- deed restricted as workforce housing units for a total of 13 units.

The proposed site plan also indicated a 2100 square foot recreation area, a 962 dry retention area and 46 parking spaces.

Access to the site will be from Cole Street.

Staff also recommends a COZ for this project, and at the time of this report there was no letters of opposition or support; however, we learned that there is someone here in the audience to speak on the project.

Staff recommends approval, subject to 16 conditions as indicated in Exhibit C.

If there are no questions, I would like to turn it over to the applicant.

CHAIRMAN BARBIERI: Is the applicant here?
(No response)

COMMISSIONER HYMAN: Oh, you're kidding.

CHAIRMAN BARBIERI: Who's the applicant on this, staff?

MR. Mac GILLIS: David Kier.

MR. WINT: David Kier.

CHAIRMAN BARBIERI: Okay. She's going to go get him, I guess.

MR. Mac GILLIS: He's coming.

MR. KIER: I apologize. I was speaking with the Westgate director there. Let me grab my board.

Good morning. David Kier, with Seminole Bay Land Company, representing the applicant for Cole Street Villas.

COMMISSIONER HYMAN: I like the rainbow.

MR. KIER: What we have before you this morning is a 13-unit workforce housing project. Of the 13 units proposed on Cole Street, five will be restricted to workforce housing in the four categories, low, middle and moderate.

This morning for you Commissioners I brought a little handout just to supplement what you have. This document that -- or documents that I'm going to give you demonstrate the surrounding zoning densities to this project, as well as putting a number of pictures in here of the surrounding neighborhood.

You will see in your package the mail-out that we did to 250 residents surrounding this project. We took a 1,000-foot radius, which is well beyond what is normally required for zoning, to make sure that everybody -- we are aware that various projects of workforce housing near Haverhill Road, et cetera, have had a lot of public input. We want to make sure that those people were included.

COMMISSIONER ARMITAGE: Move to accept.

COMMISSIONER ZUCARO: Second.

CHAIRMAN BARBIERI: Motion made by Commissioner Armitage, second by Commissioner Zucaro.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. KIER: The project that you have before you is a simple rectangular lot of 1.42 acres. It is located on a dead-end street called

Cole Street, which is immediately north of Belvedere Road and west of Military Trail.

So if you essentially turn west off of Military Trail, you'll follow the street to where it ends at a canal at this point of the property (indicating), the west side of the property.

We met with the residents two nights ago.

Approximately 30 people showed up, and after what was a very raucous meeting there I think we brought this down to what are essentially four to five issues.

First was crime. There's a lot of concern about crime in this neighborhood. We went subsequently and pulled the Sheriff's reports for this area, and there is a large amount of crime on Cole Street, Concord, Dunham (ph), this entire area.

Additionally, we did a house-to-house visual survey, not in car, but on foot, and there are tremendous code enforcement problems in this neighborhood, and I invite you to look through the pictures that you have very carefully. Nothing is more than essentially four lots away from this property.

I'm not trying to represent a condition that exists within a half a mile, a quarter-mile.

We are representing to you exactly the conditions that exist surrounding this property.

There are some very nice single family houses in here. There's a fair amount of multi-family housing, probably a one-third to maybe 40 percent of that being multi-family housing in this area, single and two-story.

So we've talked about crime. First of all, we agree, yes, there's crime, and there's code enforcement issues in there; however, we're bringing in a new project. We're clearing a piece of land that is overgrown.

It has a house on it that recently has been broken into. We've had issues with homeless.

We've been hit by the hurricanes, et cetera.

We're going to be cleaning up this site and doing a first class development.

You can see this is a two-story building.

We've tried to keep the footprints away from the adjoining property lines so the people have real back yards, so people on second floors are not looking into neighbors' yards, et cetera.

We have provided an on-site recreational area. We have more than sufficient retention, surface retention on the site, versus piped in the ground. We will be improving the end of Cole Street. We'll be adding decorative street lighting, parking lot lighting, and in our case as concerns crime, our cars are going to be in garages with two parking spaces in front.

We've turned our community in so the people can look after each other.

We are talking about houses in the workforce housing range with housing prices raised -- ranging from 170 to 240, potentially. People that buy these houses, whether they live

there themselves, rent them to their children or nephews, they're going to still be looking after what is essentially a \$200,000 investment.

Houses in this area -- and all of my information that I will present to you today is from the Palm Beach County Property Assessor's office or the Clerk of Court, so it is all public information. This is not my vague measurements or field guesses. This is documented public information that I'm sharing with you today.

So the bottom line is we have people here that are going to have a much greater investment in their units, generally, than some of the people around here.

So from my position I believe that we are not adding to the crime factor. I think we're going to help that. I think as our project goes into construction and County officials are there inspecting, et cetera, Code Enforcement is going to come into this area a lot harder, and they're going to see improvements.

We're going to be putting in street lights. We're open to looking at the entire length of Cole Street and working with the neighborhood to see that more street lights are up there.

On the entire length of Cole Street from Military Trail to the end, to my knowledge as of yesterday, one street light for that entire length.

Obviously, that's a problem, and it's something that can be corrected, but it is a separate problem from our project. So I ask you very strongly to separate the crime issue from us.

There's no proof in any way, shape or form that our residents are going to all be criminals, vandals or anything like that.

The second issue was density, and this was a big one. The document that I've given you this morning demonstrates the surrounding densities. On the aerial photograph you'll see hatched areas.

Where it is hatched with the diagonal hatch represent densities that are very close or more than what we are asking for for this project.

Our density is proposed at 9.1532479. I've calculated it way back so you can do your own rounding, whether you want to go up or down.

Surrounding properties immediately across the street are 8.33 units per acre.

Behind us, 12 units per acre. Immediately behind that, 10 units per acre. Down the street, 11.3 units per acre.

But, to be fair, that is dotted with other lower density, four-unit per acre, multi-family and single family residences at one and two units per acre.

One of the comments I made before was about the single family units. A number of these units, I believe three to four of them in the approximate, I'll say 500-foot radius of this project, have been conversions. While they look like single family houses from the street, in

fact, they are not. They're either duplexes or triplexes.

So this is an area that multi-family housing, we believe, is appropriate.

Another issue had to do with the compatibility of this project with the neighbors, not just to the east with their single family homes, but with those properties to the west that sit on one to two acres.

And I would point out to you that a question was asked that, well, is this really compatible. Well, by golly, it seems to me if I'm sitting on two acres and I can get 200, 300 feet away from something that's dense, that's pretty darn good buffer, versus sitting on my quarter-acre and looking out the back yard and seeing that thing 50 feet away.

I believe that the compatibility is there.

Secondly, in the comment on compatibility, this is a ditch, slash, canal. It belongs to Palm Beach County. It does have water in it. It's in your pictures today. It is not well maintained at this time. We will be cleaning and shaping and improving that canal.

Additionally, my clients have stipulated to a concrete wall, masonry, precast, whatever, completely surrounding the property with landscaping to go up to 16 feet of height, even willing to move trees to make sure that our windows don't look down into anybody's back yard. I believe that addresses compatibility.

Another issue was traffic. Our traffic study was done by Maria, and, Maria, I -- forgive me forgetting your last name, here from MTP. You have met Maria before. She is well recognized in the County.

We show a peak of either four or seven a.m. or p.m. trips on here. We're talking about 13 units. They are four-bedroom, one garage, but there seems to be a perception somehow that all of a sudden every one of our cars is going to be on this road at every minute.

We do not believe that the traffic is an issue or is one that should be considered.

Finally, probably the biggest problem with workforce housing is the continuing perception that workforce housing is low income or subsidized housing.

For those of us that have struggled along with this for three years we know that it's not. We know that there was an attempt to put a price ceiling on housing from spiraling out of control so that we could keep our firefighters, our schoolteachers, et cetera, in housing and not having to pay \$300,000.

The market has corrected that condition these days, and so we don't know that the workforce housing aspect isn't essentially clouding a lot of the opposition's mind in terms of thinking that we're putting Section 8 housing in here.

Our people, as I said when I first

started, are going to have a \$200,000 investment per unit in here. Whether they live there or rent there, that is not something that they're likely going to forget and not maintain.

With that, I'm happy to answer any questions you have and I'll certainly be happy to answer, rebut or respond after the public's had a chance to speak.

CHAIRMAN BARBIERI: I've got a question for you.

Could you tell me, the play area that's on the property, what's in that area?

MR. KIER: Right now we have not defined what the equipment would be. It is right now a four-foot high vinyl-coated chainlink fence with landscaping, which will actually be low to allow the community to monitor the playground.

It has a decorative trellis and mail area, benches sitting for parents to sit and watch their children in the play area, and working with Parks and Recreation we will be required to put some piece of equipment in there.

We will be buying something like a big toys, commercially manufactured piece of equipment to put in there probably in the range of five to \$7,000 for the piece of equipment.

CHAIRMAN BARBIERI: All right. I know that they're very expensive. I see that the Parks Department is requiring a contribution of \$20,136 to go to a park within five -- a five-mile area radius.

Is there any parks in this community around Cole Street?

MR. KIER: Mr. Barbieri, if I could, yes, there are. There is, I believe, a County park on Belvedere on the -- is that County?

Jim -- Jim's shaking his head yes.

There's a County park there, but one of the items you're going to hear from tonight -- I see Mr. Rutan (ph) here from Town of Haverhill, and Janice, again, publicly thank you so much for making the town hall available, wonderful help from the town.

The town is potentially interested in annexing this, and just, if I may, Mr. Barbieri -- I'm not digressing, but just adding that the town is still now looking at this area again. We could not bring it in in an annexation package we did to the west because of the issues of the roads, making you go outside of the town to come back into the town.

I don't know if you understand that, but there were reasons we couldn't annex this now.

The town now is looking at it again, and with that in mind we would rather see any recreational donation go to the Town of Haverhill where they could use it at their town hall, which, I believe, they would, hopefully be happy to receive something like that. That way our recreational contribution would be, you know, very locally centered.

And I apologize for the long answer.

CHAIRMAN BARBIERI: No, I appreciate that. I -- I just -- I agree. I mean I want to see the money go to the closest park. I mean there's -- five miles away, these kids are not going to be playing in a park five miles from their home so --

MR. KIER: Mr. Barbieri, town hall, just for what it's worth, you can walk there in two minutes from this site.

CHAIRMAN BARBIERI: All right. Staff, if this is annexed, can that money go to the Town of Haverhill to be used in a park in their area, rather than the County?

MR. Mac GILLIS: Have Jean Matthews here from Parks. No?

COMMISSIONER HYMAN: They're not giving any money up.

MR. KIER: As a former politician of 14 years, gentlemen, if we take it, commission, they can find a way, I'm sure.

CHAIRMAN BARBIERI: So there's nobody here from Parks?

MR. Mac GILLIS: I don't see anyone here.

CHAIRMAN BARBIERI: All right. Would you look into that before the Board of County Commissioners meeting?

All right. We have -- any other commissioner want to speak before I go to the public?

(No response)

CHAIRMAN BARBIERI: All right. I'll -- we have several cards. I'll call you a couple at a time. Would you please come to opposing podiums so we can move things along.

We're going to be limiting you to two minutes, if you would please try and confine your comments.

Mr. Brandenburg, would you go to one podium, and, Thelmalee Brandenburg, would you go to the next, and behind that will be Janice Rutan. State your name for the record, please.

MR. BRANDENBURG: Howard Brandenburg, 4894 Cypress Lane, West Palm.

And, yes, I oppose this housing development of 13 units. I think it's too big for the area.

As David mentioned there are one-acre lots, two-acre lots immediately west of it, and in fact this would be overlooking -- butting up against a one-acre lot and a two-acre lot, which with two stories would overlook into their back yards and so forth, and the density is too much for this area.

And the ditch that he recommended -- mentioned that is controlled by the water -- I mean Water Management Board, Palm Beach County, is dry right now. It's only about six, or maybe it's eight feet wide, just a little culvert that uses the water for overflow, and it hadn't been maintained very well by the County, by the way, but that's another issue.

And we do think this is way too big for the area. Cole Street does have a little bit of

crime on it, maybe, but people have climbed the fences and broken down fences going west into Park Lane and Cypress and my area.

I'm in -- I'm west of this unit.

And I think this is just way too dense for the area.

Thank you.

CHAIRMAN BARBIERI: Thank you.

Thelma Brandenburg, then Janice Rutan, then Elizabeth Parker.

State your name for the record, please.

MS. BRANDENBURG: I'm Thelmalee Brandenburg. I was at the meeting at Haverhill town hall two nights ago, and there were 16 residents, and actually I'm one of the 16 on the list, that they had a list going around that they asked me to bring here.

"We, the undersigned, object to the proposed Cole Street Villas project because of the high density and the adverse effect on the residential neighborhood surrounding the project.

Cole Street is a residential road that cannot handle the additional traffic. Let the property stay as zoned."

And some of the people's comments was, "I object to the high density, density too high, object to the high traffic. Besides density, property value will plummet. Object to the additional traffic, too many homes, too dense."

Some of the others were just duplicates of that.

So I'd like to leave the list with whoever I need to leave it with.

CHAIRMAN BARBIERI: Give it to the Zoning secretary.

MS. BRANDENBURG: And for myself, referencing what Mr. Kier had to say, the big amount of apartments to the north that he was referring to is actually out of the zone that the Town of Haverhill is hoping to annex.

So those denser buildings are not actually in the Town of Haverhill, the proposed annex area where they are trying to keep the density lower.

So I'd like to just see this reduced by the five units.

Also, on the concrete fence, I would like to make sure it's in the record to have an eight-foot concrete fence to the west and make sure that the trees line up with any windows that face the west to protect -- I live to the west, couple properties, but the owner of the property that just abuts to that, that was his objection, but he could not be here to say he doesn't want them to be able to look out their upper windows.

And the fence that my husband referred to is right at that west property line that has been pushed down numerous times by people cutting through.

And Cole Street may sound like a long street to you, but actually it's just one long block and then just two buildings on the second block, and it's a very narrow street as far as --

in the thing sent out by the County it was saying 46 vehicles, so that's a lot for that very narrow street.

CHAIRMAN BARBIERI: All right. Thank you.
We need a --

MS. BRANDENBURG: But I think his units look good.

CHAIRMAN BARBIERI: We need a motion to receive the petition.

COMMISSIONER HYMAN: So moved.

CHAIRMAN BARBIERI: Motion by **Commissioner Hyman**.

COMMISSIONER KAPLAN: So moved.

CHAIRMAN BARBIERI: Second by **Commissioner Kaplan**.

Discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

Janice Rutan, then Elizabeth Parker, then -- I can't pronounce this, I'm sorry, Nabil Ardel - he'll probably know who I'm speaking with. Would you come up last.

State your name for the record, please.

MS. RUTAN: I'm Janice Rutan. I arrived late, and I did not get sworn in, so I don't know if that would be necessary.

CHAIRMAN BARBIERI: Mr. Banks.

(Whereupon, speaker was sworn in by Mr. Banks.)

MR. BANKS: Thank you.

MS. RUTAN: I'm Janice Rutan. I'm the town clerk for the Town of Haverhill, and I'm here to represent Mayor Joseph Kroll, who was unable to attend.

Mr. Kier was correct. There was an informational meeting that was held at the town hall two evenings ago.

The overwhelming agreement of all those present was that the proposed development is too dense for the surrounding neighborhoods.

The mayor has written a letter, and if you'd like, I could read it into the record as well.

"The Town of Haverhill has been made aware of the petition before the Planning, Zoning and Building Department for a rezoning of 1.42 acres of land from Residential High Density to the Multi-family Residential Zoning District."

"In addition, the applicant is requesting to designate the property as a receiving area for TDRs, thus allowing an additional five units to be deed-restricted as workforce housing units for a total of 13 dwelling units. The above-captioned property is included in the Town of Haverhill's future annexation area."

"In addition, it is adjacent to and abuts recently annexed Town of Haverhill property on its western property line. The abutting properties

are one-acre single family lots and are surrounded by single family residential properties. A multi-family two-story unit adjacent to and abutting these properties would adversely impact the residential character of the neighborhood, and the density is contrary to the Haverhill Area Neighborhood Plan."

"In addition, the two-story townhouses proposed would loom over the neighboring lots and eliminate any quiet enjoyment presently afforded to the property owners. If this project is allowed to move forward, at a minimum an eight-foot privacy wall should be required along the western boundary of the project."

"There was an informational meeting held at the Haverhill Town Hall last evening in which residents surrounding the property were present and overwhelmingly objected to the intensity of the project and the resulting traffic, environmental impacts and the congestion a project of this caliber would have on the residential neighborhood. Those present were aware of the present build-out of the property, which I understand is HR-8, but objected to an increase in density due to the transfer of TDRs and workforce housing accommodations."

"The Town of Haverhill objects to the rezoning of the property, as well as to the Class A conditional use for the additional units to be deed-restricted as workforce housing units for a total of 13. The present zoning of the property allows for multi-dwelling units and should be held to those standards. Please allow the Town of Haverhill and its neighboring properties to remain residential in character. Sincerely, Mayor Joseph S. Kröll."

And that is it.

CHAIRMAN BARBIERI: All right. Would you like to submit that for the record?

Do we have a motion?

COMMISSIONER ARMITAGE: Move to accept.

CHAIRMAN BARBIERI: Motion made by Commissioner Armitage.

COMMISSIONER HYMAN: Second.

CHAIRMAN BARBIERI: Second made by Commissioner Hyman.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries.

MS. RUTAN: Thank you.

CHAIRMAN BARBIERI: You're welcome. Thank you.

COMMISSIONER HYMAN: What kind of barrier do you have on the west side of the property now?

Is it a six-foot fence, and they're asking for an eight-foot concrete fence, but that's --

MR. Mac GILLIS: They're compatible, so there probably wouldn't be a -- I'll turn that

over to Anthony to address.

COMMISSIONER HYMAN: That would be a wall?

MR. WINT: There -- there's a canal on the west side of the property that divides --

COMMISSIONER HYMAN: Right.

MR. WINT: -- the subject property from the other properties to the west.

COMMISSIONER HYMAN: So are -- are we requiring -- I don't recall. We requiring any kind of fencing?

MR. WINT: We're not -- currently not requiring fencing, but we're not opposed to it if it's recommended.

CHAIRMAN BARBIERI: Maryann.

MS. KWOK: Actually, this is -- this, by code, when there is a difference of -- let's say adjacent is single family and the proposed is multi-family, the code already requires --

COMMISSIONER HYMAN: Right.

MS. KWOK: -- a six-foot high screen, and that could be a hedge or a fence. So code already require something six-foot high.

COMMISSIONER HYMAN: All right. And now we've heard two speakers ask for something eight feet high.

You think that would be appropriate there?

MS. KWOK: We can accommodate that, that additional two feet high.

COMMISSIONER HYMAN: And what would that be?

MS. KWOK: What was that?

COMMISSIONER HYMAN: What would it be?

MS. KWOK: It would -- it could be a wood fence. It could be a six-foot high hedge to be -- to be, you know, grown to two -- eight feet at maturity.

COMMISSIONER HYMAN: So can I ask the petitioner?

Do they have any objection? The neighbors want an eight-foot high screened --

MR. KIER: We have no objection.

COMMISSIONER HYMAN: -- of some sort.

MR. KIER: We would just ask for some flexibility in working with staff.

What I tend to see is maybe six-foot height of concrete block precast and another two feet of lattice or something that can carry a vine, but what we could do is stipulate to a -- or a, as Maryann was referring to, you know, X amount of feet of screening to be achieved, you know, as full opaque screening, and then we work with staff to determine whether that is best handled with hedges, trees, et cetera.

Ms. Hyman, also, just very quickly, there is that canal there. It is Palm Beach County probably is not holding as much of an easement as it should, et cetera, so we'll also be coordinating with Land Development before we stipulate to too much.

I don't want to build an eight-foot wall and then watch it slide into the canal, but we can get the eight-foot of screening.

COMMISSIONER HYMAN: Okay. I would just add --

MS. KWOK: There would be additional COZ occur on this if we recommended an eight-foot high panel wall. That would be better than the --

COMMISSIONER HYMAN: I think so.

MS. KWOK: -- than the wall and the fence on top.

COMMISSIONER HYMAN: That's right.

MS. KWOK: It does not look good that way.

And Jon just mentioned about the wood fence, and in fact, you know, wood fences may damage during the hurricanes, and we don't want to have, you know, extra maintenance in the future.

So we would recommend eight-foot high panel wall in this case.

CHAIRMAN BARBIERI: All right.

Elizabeth Parker, are you here?

(No response)

CHAIRMAN BARBIERI: And there was another person that submitted a card, N-a-b-i-l, I think, A-r-d-e-l A-h-a-d.

MR. AHAD: Don't want to speak.

CHAIRMAN BARBIERI: No one?

COMMISSIONER HYMAN: Okay. They don't want to speak.

CHAIRMAN BARBIERI: All right. Is there anybody else who wanted to speak on this item?

(No response)

CHAIRMAN BARBIERI: All right. We'll close the public portion. Back to the Commission.

Petitioner, would you please come back up to the podium.

MR. KIER: Yes, sir.

CHAIRMAN BARBIERI: One thing that you mentioned is you would like to do something on Cole Street.

I've had experience with FP&L getting the lights, and I know there's an addition -- an up front cost that somehow is recovered over so many years. I'm not sure exactly how it works, but I'd like to see you move forward with that. And if you can work with FP&L and get some street lights on that street as one of the conditions and maybe you could somehow come to some resolution on how that would work before the BCC.

Jim?

MR. CHOBAN: What section would you like to have lit?

CHAIRMAN BARBIERI: Well, he said there's only --

MR. CHOBAN: Military?

CHAIRMAN BARBIERI: He said there's one -- one street light on all of Cole Street, and there must be a lot of children that live there. So whatever's appropriate for that stretch of --

MR. CHOBAN: The whole street?

CHAIRMAN BARBIERI: The whole street.

MR. KIER: Okay. And, Jim, maybe either that or a radius, because you actually have Cole and then Concord, which is the one that leads to the town hall and the park.

So maybe with your direction we can just come up with a radius versus just doing one street to Military Trail. We get --

CHAIRMAN BARBIERI: That's fine, and where do the kids wait for the schoolbus here, these kids on Cole Street? Is there a bus --

MR. KIER: I have not been there in the morning. I really don't know.

Right now there's no bus shelter, bench or anything to indicate that, nor any wear or tear, if you will, of ground that'd help me determine that, but we would certainly look, even in a case like that, to be a good neighbor and, you know, put a bench and a slab there and --

CHAIRMAN BARBIERI: Right.

MR. KIER: If that would help.

CHAIRMAN BARBIERI: Yes, sir. State your name for the record.

Do you have information on where the kids wait for the bus?

MR. AHAD: Have a lot of kids come in from Cherry Road, pick up from Cole Street and Concord, the corner, about 20 -- about 25 kids under -- almost six, seven years old.

CHAIRMAN BARBIERI: Concord and which?

MR. AHAD: And Cole -- Cole Street.

CHAIRMAN BARBIERI: Cole and Concord on the --

MR. AHAD: Yes. I live in 22 years in this street, you know, yeah.

CHAIRMAN BARBIERI: What's your -- what's your name?

MR. AHAD: Nabil. I'm Nabil, but I don't want to speak, you know, just --

CHAIRMAN BARBIERI: I guess I drafted you into it.

MR. AHAD: Yeah.

CHAIRMAN BARBIERI: Whether you want to or not, you're doing it, so you're doing a great job.

COMMISSIONER HYMAN: I don't hear you.

MR. AHAD: Thank you.

CHAIRMAN BARBIERI: Thank you very much.

All right. So, staff, if you could figure out, you know, especially the money's available for Parks, if we can get the Parks to let up on some of the cash, if we could figure out a place -- if there's 20 elementary school kids that wait for a bus somewhere and there's no place for them to wait outside of the rain and the elements, you know, if we can figure out a place somewhere in that -- in that radius where they could wait or work with the School Board to see what we could come up with on that.

MR. KIER: We would stipulate to work with the School Board and staff on that.

COMMISSIONER HYMAN: Are they going to be required to fund a little shelter?

MR. KIER: If we're allowed flexibility in design so that, you know, all of a sudden we're not building a little mini-Taj Mahal, I believe we could be comfortable with that, as well.

CHAIRMAN BARBIERI: Basically, I think

we're requiring --

MR. KIER: But we were talking about rainproof, not --

CHAIRMAN BARBIERI: Yes, something with a roof.

MR. KIER: -- a useless trellis?

CHAIRMAN BARBIERI: Something with a roof that the kids can stand under --

MR. KIER: Yes, sir.

CHAIRMAN BARBIERI: -- and wait out of the rain.

MR. KIER: Uh-huh.

CHAIRMAN BARBIERI: Basically is what we're looking for.

COMMISSIONER HYMAN: I think you should add that.

MR. KIER: And we would -- also -- let me also add we'll do this in association with the surrounding neighborhood so architectural styles, and we don't create new issues.

CHAIRMAN BARBIERI: All right.

Yes, sir.

MR. OWENS: Yes. I'm Michael Owens, representing the School Board.

Generally speaking, a project like this is too small for us to actually require the shelter on site, plus the -- with the fact that the road dead-ends, it'd be hard for us to get a bus down Cole Street.

If anything, I think they would have kept it probably adjacent to Military Trail, but we can actually look at the situation, see if there is any improvements that can be made.

CHAIRMAN BARBIERI: Yeah, we'd like you to do that because he said -- the gentleman said there's 20, maybe 20 children that wait for a bus in the morning somewhere in that area, so if they're willing to fund something, if you could find a place for that, I'd like to see that done.

MR. OWENS: We can look into that, sir.

MR. KIER: Why don't we stipulate that -- that we'll do that with distance being as much as to Military Trail.

I think when we look at the area, you're going to find with Cole Street and Concord, you may have a different location, and I don't want anything in our conditions have to be revised as far as location.

We just stipulate we'll do it, agreeing to go up to as far as Military Trail?

MR. OWENS: Okay.

CHAIRMAN BARBIERI: Well, you --

MR. KIER: Would that be acceptable?

CHAIRMAN BARBIERI: You have until the County Commission meeting for staff to come up with some kind of condition that -- working with the School Board on that.

MR. KIER: Thank you.

COMMISSIONER HYMAN: Also, following up with what the Chair said before about the play area, I'd like to see some kind of specific language in there that there should be a useful

piece of equipment, play equipment, for the kids that are there if --

MR. KIER: On site on our recreation --

COMMISSIONER HYMAN: In that play -- in what you call a play area.

MR. KIER: Yes, ma'am.

COMMISSIONER HYMAN: And then you have two dry detention areas. Are those going to be like chainlink fenced in?

MR. KIER: No, ma'am. These are shallow four-to-one sloped areas --

COMMISSIONER HYMAN: Oh, good.

MR. KIER: -- with the idea being when they're wet, the kids will probably play in them, anyway, but when they're dry --

COMMISSIONER HYMAN: Okay.

MR. KIER: -- we'll just essentially have a largely green site.

COMMISSIONER HYMAN: Okay. Good. All right.

CHAIRMAN BARBIERI: Any other commissioners?

(No response)

COMMISSIONER HYMAN: With that, I'm going to move approval of the Official Zoning Map Amendment from Residential High Density Zoning District to the Multi-family Residential Zoning District.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: All right. We have a motion by **Commissioner Hyman**, second by Commissioner Kaplan.

Under discussion, the -- I'd like resolution on the money for the park. I mean I don't want to put this money that's allocated in a park that's five miles away from these kids.

If there's that many small kids waiting for a bus, there must be a place for these kids to play closer, so if we can -- even if it's cooperating with Haverhill, if they don't annex and we put the money into a park that's in the area that's on Haverhill property, I'd prefer to see that.

I mean it's ridiculous to --

COMMISSIONER HYMAN: In the area.

CHAIRMAN BARBIERI: -- put the money somewhere five miles -- up to five miles away from them.

So if we could work on that before the BCC and figure out a place to put that money for the park?

COMMISSIONER HYMAN: I would incorporate that into my motion.

COMMISSIONER ZUCARO: Comment, please.

CHAIRMAN BARBIERI: Yes, sir, Mr. Zucaro.

COMMISSIONER ZUCARO: I'd like to also see incorporated some of the other comments that have been made. For instance, the Cole Street lighting. That lighting issue, I think is very --

MR. CHOBAN: We're going to add that condition.

COMMISSIONER HYMAN: That's all part of

it.

COMMISSIONER ZUCARO: All part of it?
And I take a little bit of concern, perhaps for the developer, on this because you left your -- you left yourself with an obligation to build a -- and fund a bus circumstance for the children.

That's an open-ended question and may be lots of dollars. So, you know, I think that they -- we should hold them to a standard of a best efforts kind of circumstance --

COMMISSIONER HYMAN: No, no.

COMMISSIONER ZUCARO: -- to negotiate that.

COMMISSIONER HYMAN: No, no. I -- no. My motion was that they would fund it.

COMMISSIONER KAPLAN: Best efforts has no meaning, Commissioner.

COMMISSIONER HYMAN: Not use best efforts. They would fund it.

MR. KIER: Yeah, and we have -- Ms. Hyman, we've stipulated that we will fund it.

The only thing I -- you know, it's not going to be gold-plated. I don't think we're going to have an issue there. I really don't.

COMMISSIONER ZUCARO: Okay. And your comment was that you would build something six-foot and then put lattice.

COMMISSIONER HYMAN: No, no.

MR. KIER: That was a suggestion.

COMMISSIONER ZUCARO: Wait. I think that the Board said and staff said that they want a wall. So you're willing to fund the wall?

MR. KIER: Yes, sir.

COMMISSIONER KAPLAN: The wall is part of the conditions.

COMMISSIONER HYMAN: My motion includes -- included that. It was an eight-foot --

MR. Mac GILLIS: Panel wall.

COMMISSIONER HYMAN: -- panel wall.

COMMISSIONER ZUCARO: Okay.

COMMISSIONER HYMAN: Move for approval of a Class A conditional use to allow the transfer of development rights for five units, designate this application as the receiving area and to allow the sale of development rights at \$1 per unit, subject to the conditions.

COMMISSIONER KAPLAN: Second.

MS. KWOK: Actually -- excuse me. We're also missing your standard TDR conditions in the staff report, so I would like to include all those conditions.

COMMISSIONER ZUCARO: That's the second the motion.

MS. KWOK: The TDR conditions.

COMMISSIONER HYMAN: That's the next one.

MS. KWOK: Okay. Sorry.

MR. BANKS: Did you vote on the first motion?

CHAIRMAN BARBIERI: No, we don't have a -- we don't have a second on that yet. Who's seconding that motion?

COMMISSIONER KAPLAN: I seconded that.

CHAIRMAN BARBIERI: Motion's been made, Commissioner Hyman, second by Commissioner Kaplan. Discussion?

COMMISSIONER BRUMFIELD: We didn't vote on the first motion.

CHAIRMAN BARBIERI: I'm sorry.

COMMISSIONER ZUCARO: Call the question.

CHAIRMAN BARBIERI: Okay. The first motion which was --

COMMISSIONER HYMAN: Approval of the zoning map amendment.

CHAIRMAN BARBIERI: Okay. And that was seconded by Commissioner Kaplan? All right.

Any discussion on that motion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

Now Commissioner Hyman, you had made the second motion. It was seconded by Commissioner Kaplan.

Is there any discussion on that motion?

COMMISSIONER ZUCARO: Yeah. I'd just like to reiterate my comment from the previous thing that we did in that I see the policy that we support by supporting this kind of thing is the workforce housing policy.

It makes predictability for the developer, so I commend the developers for doing that and for staff bringing these TDRs forward because workforce housing is a public policy statement that's been set by the County Commission, and I -- and so I think that it is a worthwhile thing.

I just want to make one comment to the Town of Haverhill. It seems to me that the essence of the letter that was written by the mayor and read into the record suggests that this section should remain residential in character, and for the life of me I can't figure out how what is being proposed is not residential in character, and it supports infill.

It supports the notion of redevelopment versus further expansion and urban development to our western communities.

I just see all of the substantial and competent evidence, which is what our standard is, supports this, and from a policy point of view it supports the policies that are now in place by the County Commission. So I have to support this.

CHAIRMAN BARBIERI: All right.

Any other comments?

(No response)

CHAIRMAN BARBIERI: Staff, when you're working with the buffering on the -- I guess it's the --

MR. Mac GILLIS: West.

CHAIRMAN BARBIERI: -- the side of the -- that looks down at the homes --

MR. Mac GILLIS: West property line?

CHAIRMAN BARBIERI: Yeah, wherever the -- wherever that -- I can't tell on this map. There's no north or south on here so I don't know which way's west, but -- that's north? Okay. So -- yeah, it would be the west side then.

We just make sure that -- somebody suggested that the trees are placed in such a way to kind of shield the homes from the windows so work with them to -- when you're designing the buffer.

Petitioner, when working on the buffer, would you try and concentrate putting the heaviest buffer area where the windows are at in the residential homes that are next to you?

MR. KIER: We will have that very specifically shown on the plans, Jon, with not just locations on the map, but also a specification note that even if a window moves in the field, the tree will move accordingly.

CHAIRMAN BARBIERI: Okay. Great.

All right. If there's no further discussion, we'll take a vote on the motion.

All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: Move approval of -- to allow the transfer of development rights, subject to all conditions.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion made by **Commissioner Hyman**, seconded by Commissioner Kaplan.

Discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. KIER: Thank you very much for your time.

CHAIRMAN BARBIERI: You're welcome

MR. Mac GILLIS: Okay. That brings us to Item 13, Z2007-2004, Osorio Rezoning.

Staff is recommending approval, subject to five conditions.

I believe the only issue with this one is that the applicant wasn't here.

COMMISSIONER HYMAN: That's right.

MR. Mac GILLIS: I believe they're in the audience now.

CHAIRMAN BARBIERI: Was this item on consent before?

MR. Mac GILLIS: Yes.

CHAIRMAN BARBIERI: Okay. So do you agree -- state your name for the record, please.

MR. OSORIO: Carlos Osorio. I'm with the architectural group.

Yes, we have read the staff recommendations and accept and agree to the conditions of approval.

CHAIRMAN BARBIERI: All right.

COMMISSIONER HYMAN: No cards.

CHAIRMAN BARBIERI: We have no cards on this.

Is there anybody here from the public to speak on Item No. 14, ZV/SV/DOA-2008-092?

(No response)

COMMISSIONER HYMAN: Move approval of official zoning map amendment from Residential Estate --

COMMISSIONER ZUCARO: That's Item 13, Mr. Chair.

CHAIRMAN BARBIERI: I'm sorry. I read the wrong one.

COMMISSIONER HYMAN: Well, I got -- move approval of the official zoning map amendment from the Residential Estate Zoning District to the Residential Transitional Zoning District, 2007-2004.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Okay. The number of that was Z2007-2004.

Was there anybody here to speak on that?

(No response)

CHAIRMAN BARBIERI: All right.

We have a motion by Commissioner Hyman, second by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. OSORIO: Thank you.

MR. Mac GILLIS: Next item is 14, ZV/SV/DOA-2008-092, the WFLX Tower Site.

Staff was recommending approval of this on the consent agenda. I believe there are some people in the audience objecting to this.

Carol will give us a brief presentation on this item.

MS. GLASSER: Good morning. Carol Glasser, project manager.

Proposed is an amendment to the WFLX tower site to amend the legal description of the 1980 Resolution No. 838 to delete approximately 70.8 vacant acres from the existing approximately 111.1-acre site to limit the tower use to approximately 40.3 acres.

If you go to your packet on Page 248, it's probably best seen graphically.

The site is approximately two miles west of State Road 7, south of the Village of Wellington, and you can see the proximity of the Homeland subdivision and the rectangular existing 111-acre site and the proposed boundary of the tower site.

Two variances are also requested, a subdivision to allow legal access from a recorded 30-foot access easement, and a Type II variance to eliminate the frontage requirement.

The site is accessed through Homeland Road, and at the terminus of Homeland Road on Page 253 you can see that there's a security gate identifying the WFLX tower, and the tower is off in the distance there to the south.

Staff received one letter in opposition indicating a desire for the land to remain as preserve.

The applicant has submitted an application subsequent to this, Application 2008-448, to rezone the deleted 70.8 acres to preservation area for the Amestoy AGR PUD.

To get an idea of the variances requested you would want to go to your tower site map, and you can see that the -- it's accessed off of Homeland Road. The access easement, which is the subject of the subdivision variance, and where the proposed boundary touches upon the proposed legal access is the subject of the frontage variance to eliminate frontage.

Staff also received one telephone call on April 22nd from a member of the Homeland association, Ms. Diane -- Dionne Parker. They were concerned about the access agreement. She had received the courtesy notice and telephoned us on April 22nd.

Pursuant to that phone call I faxed a copy of the recorded access agreement on April 22nd. She stated that they had just switched attorneys and didn't have these records, and they were under the impression that the road was a private road.

We do have a member of the public here to speak. That's why we pulled it from the consent to the regular agenda.

Staff is recommending approval, subject to six conditions.

CHAIRMAN BARBIERI: Okay.

MR. RATTERREE: For the record, Kevin Ratterree, with GL Homes.

If you don't mind, Mr. Chair, I do agree with the conditions of approval. It might be beneficial just to hear the objection, and then I can address the objection 'cause it relates to access --

CHAIRMAN BARBIERI: That would be fine.

MR. RATTERREE: -- to the property, rather than doing a --

CHAIRMAN BARBIERI: Mr. Annunziata, would you please come back to the podium.

State your name for the record, please.

MR. ANNUNZIATA: Steve Annunziata.

CHAIRMAN BARBIERI: All right.

MR. ANNUNZIATA: We had board meeting Monday, and that was the first time that we were notified about this. I think that one or two residents received notice. The homeowners association didn't receive any notice.

And our only concern is with the road and access through our security gate and tractor-trailers that they're talking about that are going to go up and access to the tower.

And we just wanted additional time to check the deeds and check the actual legal document that was signed when we -- when it became a private road from a public road and just to allow our attorney some time to -- I don't doubt that most of what they're telling me is correct, but we just haven't had the time to check it out.

CHAIRMAN BARBIERI: **Commissioner Hyman.**

COMMISSIONER HYMAN: Kevin, what is GL Homes going to be doing there?

MR. RATTERREE: You want me to -- is he done? You want me to --

CHAIRMAN BARBIERI: That's all right. We'll leave him up there. Go ahead, answer him.

MR. RATTERREE: For the record, again, Kevin Ratterree.

There was a prior determination issued by the Board of County Commissioners regarding the use of the South Florida Water Management District lands associated with preservation and transfer of density.

The area that's shown in red is the boundary of the existing tower development order.

What we are doing is amending the boundary of the tower development order to the circular pattern, which is the fall zone of the existing tower.

The area outside of that yellow, inside the red, will be a future preservation area for one of our Ag Reserve PUDs, which means the area will be subject to a recorded conservation easement which will leave the property in perpetuity to wetlands, bona fide agriculture, those uses allowed under the existing Comprehensive Plan and zoning code.

The issue that's being raised is an issue of access.

I want to make it clear that tower exists today. It provides for two local television

stations to transmit from that tower, as well as several cellular providers.

The access to that property, as recorded, is from State Road 7 along Windsor Place down Homeland to this point (indicating), and then it runs through South Florida Water Management District property south to get to the subject site.

So the variance is to allow this yellow property to have access through that easement.

As to his position whether it is or is not the legal access. That is the legal access. Let's assume for a second he is correct, then this property has been severed legal access. So there's an issue associated with that.

All I've suggested to him is, irrespective of your action today, the issue of access is irrelevant to the petition that's before you.

That's an existing tower. Obviously, they need to be able to service that tower.

So if in fact, as we believe, that road is the legal access to the property, it was a recorded instrument. That is their access, and that's the way they get to the property.

If in fact it's not, somebody's going to have to show South Florida Water Management District how they're supposed to get to their property 'cause somebody severed their legal access, 'cause that is a recorded instrument in the public records.

And although I respect his position that, you know, he wants to postpone to figure it out, the reality is that we're not changing the tower.

There's no more trips. We're not changing the tower at all. We're just reconfiguring the boundary to allow that perimeter to be utilized as preservation, which, by definition, will not have any units associated with it.

MR. ANNUNZIATA: Can I just say then why is part of the variance a request to allow legal access from an easement?

If it's already in place, then why does that --

COMMISSIONER HYMAN: He just explained that. It went from the red area --

MR. RATTERREE: Yeah.

COMMISSIONER HYMAN: -- to the yellow.

MR. RATTERREE: Yeah, this is -- this is the new parcel that's being created, and that parcel needs access from -- and if it wasn't an easement, it would be an arterial roadway, which is the last thing you want, is an arterial roadway running back there.

COMMISSIONER HYMAN: So what he's saying is it's already established through your community, and it's just to get from the outside of the current parcel to the outside of what the revised tower parcel will be that's outlined in yellow.

MR. ANNUNZIATA: And we would like the time to check out that assumption that what he says is that it's already in place. That's all.

COMMISSIONER ZUCARO: Mr. Chair.

CHAIRMAN BARBIERI: Mr. Zucaro.

COMMISSIONER ZUCARO: I think we can accommodate that.

You've got three weeks between now and the County Commission. Oh, we make the decision today?

CHAIRMAN BARBIERI: Yeah. This is a variance.

MS. GLASSER: Yes, he's opposing the variances, but I've been -- what's been indicated to me is that they don't oppose the development order amendment to change the boundary of the site, but they were in opposition to the variance, so that is today's decision.

COMMISSIONER HYMAN: Well, we don't leave parcels without legal access.

Did Engineering take a look at this at all? Do you have any comment on their access?

MR. CHOBAN: I was going to maybe just ask if -- maybe we could do some sort of a condition of approval that if legal access has been determined not to exist, that they have to bring the project back.

MR. BANKS: The property's -- this tower has existed for years and years. This is just a red herring. I think the Board should just pass on this.

COMMISSIONER HYMAN: Yeah, I agree. I --

MR. ROGERS: To address your question, we did look at the easement. The easement is recorded in the public records.

COMMISSIONER HYMAN: Okay.

MR. ROGERS: That was the limit of our looking into it. It -- they do have access.

COMMISSIONER HYMAN: All right. I appreciate your concern, but I -- I think that that's --

MR. ANNUNZIATA: Okay. Thank you.

COMMISSIONER HYMAN: So I'm going to move approval of the resolution approving the Type II zoning variance to allow the zero feet of lot frontage.

COMMISSIONER ZUCARO: Second.

CHAIRMAN BARBIERI: All right. Is there any -- the motion was made, Commissioner Hyman, seconded by Commissioner Zucaro.

Discussion.

Yes, Commissioner Davis.

COMMISSIONER DAVIS: I'm going to vote no on this just because I have a fundamental philosophical problem with a developer using public land, publicly owned land, as preserve to promote development in the Ag Reserve.

CHAIRMAN BARBIERI: All right. Is there any other discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONER HYMAN: Aye.

COMMISSIONER ZUCARO: Aye.

COMMISSIONER KAPLAN: Aye.

COMMISSIONER BRUMFIELD: Aye.

COMMISSIONER ARMITAGE: Aye.

CHAIRMAN BARBIERI: Aye.

Opposed.

COMMISSIONER DAVIS: Aye.

CHAIRMAN BARBIERI: Motion carries, 6-1,
with Commissioner Davis voting no.

COMMISSIONER HYMAN: I move approval of
the resolution approving a subdivision variance to
allow the legal access from an easement, subject
to those conditions.

COMMISSIONER ZUCARO: Second.

CHAIRMAN BARBIERI: Is there any
discussion?

(No response)

CHAIRMAN BARBIERI: Motion made by
Commissioner Hyman, second by Commissioner Zucaro.
All in favor.

COMMISSIONER HYMAN: Aye.

COMMISSIONER ZUCARO: Aye.

COMMISSIONER KAPLAN: Aye.

COMMISSIONER BRUMFIELD: Aye.

COMMISSIONER ARMITAGE: Aye.

CHAIRMAN BARBIERI: Aye.

Opposed.

COMMISSIONER DAVIS: Aye.

CHAIRMAN BARBIERI: Motion carries, 6-1,
with Commissioner Davis opposing.

COMMISSIONER HYMAN: Move approval of a
development order amendment to delete land area.

COMMISSIONER ZUCARO: Second.

CHAIRMAN BARBIERI: Motion made by
Commissioner Hyman, second by Commissioner Zucaro.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONER HYMAN: Aye.

COMMISSIONER ZUCARO: Aye.

COMMISSIONER KAPLAN: Aye.

COMMISSIONER BRUMFIELD: Aye.

COMMISSIONER ARMITAGE: Aye.

CHAIRMAN BARBIERI: Aye.

Opposed.

COMMISSIONER DAVIS: Aye.

CHAIRMAN BARBIERI: Motion carries, 6-1,
with Commissioner Davis in opposition.

MR. RATTERREE: Thank you.

CHAIRMAN BARBIERI: You're welcome.

MR. RATTERREE: By the way, this petition
was not using preserve. That's a future petition,
so your vote no on that one I'll expect.

CHAIRMAN BARBIERI: Thank you.

MR. Mac GILLIS: This will bring us to Items 21, 22 and 23 that were pulled. These are all -- three of these variances are within the Jonathan's Landing PUD. They're all related to tear-down homes and replacement with new units.

Just so the Board knows, the Zoning staff is currently working on ULDC amendments that we had brought to the Board in August of this year that are going to actually address in the ULDC replacement units for zero lot lines and townhouses that are removed in planned developments.

Currently there's language in there that the -- any unit that's removed in an existing planned development, a townhouse or zero lot line has to be replaced with a similar unit in size and character.

The language is very broad, and it's come in to our attention now that these older planned developments, people are coming in and doing tear-downs. We're running into problems that it's -- there's no standards there for me as the Director to apply.

So this is one of the -- Jonathan's Landing is probably one of our older planned developments where they have a lot of property on the canals, and people are coming in that were prior winter homes, that they're coming in now and making them permanent homes and trying to expand them, and they're running into problems with the code, even though the HOA is totally in support of the new development, their characteristics in terms of size and architectural style and everything.

So this variance would be still required under the new code. What we're doing is putting provisions in the code that would allow up to 30 percent increase in your setbacks and your building height by right under the code, but anything over that would still have to come to this Board for a variance.

So we're trying to accommodate to a certain degree but not to the point that somebody could have a significant impact on the character of the neighborhood if they weren't coming to this Board to justify a variance.

So that's what these variances are here before you, that they're exceeding that what staff would support under the new code amendments unless they apply for a variance.

So if you want to take these one by one?

So Item 21, ZV2008-467, Scranton Variance, staff is recommending approval, subject to five conditions for a replacement townhouse to reduce the front setback on a parking tract and reduce the building separations.

CHAIRMAN BARBIERI: Mr. Prout.

COMMISSIONER HYMAN: We already approved two of these, 19 and 20.

MR. Mac GILLIS: Yeah.

COMMISSIONER HYMAN: Right? And so it's

the same thing.

MR. SULLIVAN: No. The two that were approved were for zero lot line homes, and these three are for townhouses.

COMMISSIONER HYMAN: Oh.

MR. SULLIVAN: That's the difference.

MR. PROUT: Good morning. My name is Robert Prout, and I live at 17244 Bay Street. I live in one of the townhouses, the adjacent townhouse to the three that are under discussion.

Actually, my comments really are about the three units because they're all basically similar plans that have been submitted.

The driveways, the existing driveways in front of the houses right now, two of them are 30 feet deep, and the third one in front of the Scranton house is 18½ due to a circular roundabout that's in front of that house. Hers -- their's is a little shorter.

But I believe we should maintain the 25-foot setback that's in the Jonathan's Landing code and also Palm Beach code for driveways.

If we make them any shorter, particularly with houses that are in the four or five-foot [sic] bedroom size, we don't have enough on-site parking to take care of the cars that could accumulate there.

And our street in front of it is a 25-foot wide road. Initially it was called a parking area when Alcoa, the original developer, had model homes in -- along this area, And since then, since 1980, of course, it's become a continuation of Bay Street, 24-foot wide, which isn't very wide, but it doesn't allow -- we don't allow parking on site unless -- just temporary parking, but we don't allow parking on the road because it is so narrow.

So anything less, driveway depth, is just going to make the situation worse.

We've also attempted to keep the front yard footprint, the setbacks, similar to the present ones, and the new plans reduce the front yard setback so we're going to have less landscaping and all the -- all the other features.

Now the front elevation that's shown -- I know you people don't get involved in architectural, but the front elevation shown on these particular plans show three large garage doors in each unit, and some backing up back to back so you have a run of six garage doors in a row. It almost gives an appearance of a storage warehouse, which is not the appearance that we have in our townhouse now.

And I would like to ask you that a condition of any approval would be that the architect or the developer has to do a complete elevation of the six townhouses to see how the three that are going to be in the middle are compatible because the ones that are shown on the -- on the submitted drawings are just not compatible at all with our townhouse.

Now, I've lived in my townhouse for

approximately 10 years. Next door neighbor's been in his a little longer, and these have a market value in a decent market of a million dollars each or a little more.

So we like to protect our present homes. Our present homes have been improved. They're very, very good condition, and these three that are kind of almost in the middle are being developed for speculation, really.

The end unit is owned by Mr. Partridge, and he has submitted a request to -- to not allow this, as I have and the other adjacent owner to me, Mr. Lobdell (ph). We've all requested this not be approved in its present form.

We don't really object to the second floor addition, as long as it's architecturally compatible and the roof lines don't get carried out of height so that it has a static -- staggered effect, which shouldn't happen if it's designed properly.

CHAIRMAN BARBIERI: Mr. Prout, would try and wrap it up for us? We've given you some additional time, but.

MR. PROUT: Well, I do have a petition signed by 15 of our residents that also disapprove it. I don't know if you want to put that in the record, but I'll give you a copy of it.

COMMISSIONER KAPLAN: I'll move to accept the petition, Mr. Chairman.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Okay. I have a motion to admit it to the record by Commissioner Kaplan, second by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7 -- 6-0. Commissioner Davis is out of the room.

MR. PROUT: Thank you for your --

CHAIRMAN BARBIERI: You're welcome. Thank you.

MR. PROUT: Appreciate it.

COMMISSIONER HYMAN: Petitioner back up --

CHAIRMAN BARBIERI: Petitioner, Mr. Carpenter.

MR. Mac GILLIS: If I could ask the staff -- I skipped over staff doing a brief presentation. I think it would help try to explain the --

CHAIRMAN BARBIERI: Sure. Yeah, one thing -- I guess one question I was going to ask, anyway, is what about the parking?

I mean are we concerned about enough parking for a four or five-bedroom unit if you limit the size of the driveways, by allowing the setback to be shorter? Do we have enough room for parking?

MR. SULLIVAN: There was some concern for that. I'd like to just give a little bit of an

overview.

These three units are all adjacent to each other. They're the second, third and fourth units from the south end of the six-block unit of townhouses, and they're actually requesting three variances, each of these units.

One of the variances is to allow replacement of a townhouse with a larger unit, and as Jon mentioned, that's -- there's currently a code revision in place with the next round that would allow townhouses and zero lot lines to be replaced with larger units.

So this variance is required now but would not be required once that code revision's in place.

The other two, there's also a variance requested for the end unit separation on townhouse units, and in 1974 when the -- Jonathan's Landing was approved, the end unit separation for townhouse units from other townhouse units was 15 feet.

Current code has a stepped end unit separation based on the height of the townhouses, so in this case they're just asking for the same end unit separation that was approved -- was allowed when the original plans were approved.

The item that seems to be the concern, the third variance, has to do with the set -- the front setback variance from a parking tract, and in the 1974 code when these were approved, there was no front setback from a parking tract.

From a right-of-way there was a setback but not from a parking tract, and these were shown on the approved plan with eight or 10-foot setbacks just because there were existing easements that existed there, but in this case the owner is asking for a setback reduction to 10 feet consistent with what was shown on the plan that was approved in 1974.

COMMISSIONER KAPLAN: Mr. Chairman, may I ask staff a question?

Staff, are there any other approved applications for this type of relief, on the townhouses that now exist?

MR. SULLIVAN: There were some units that were approved without coming to Zoning even, through building permit because they were built as shown on the approved plans.

COMMISSIONER KAPLAN: So you have some townhouses, and then you have some of the others that were approved without a zoning approval?

MR. SULLIVAN: Yes. In fact, I believe the end unit on this block of six was approved, and it's a larger footprint than the existing unit was.

COMMISSIONER KAPLAN: Thank you.

MR. SULLIVAN: I'm not sure about the other parts.

CHAIRMAN BARBIERI: All right.

MR. Mac GILLIS: Did you answer the question regarding the garage and the distance per parking --

MR. SULLIVAN: There would not be room -- what they're requesting would have a 10-foot space between the front end -- between the front-loading garage and the parking tract.

So to answer your question there would not be adequate room for a car in the parking tract behind the garage.

CHAIRMAN BARBIERI: Okay. So --

COMMISSIONER HYMAN: There's a --

MR. Mac GILLIS: It's not inconsistent with the development.

I've personally been up through this development and --

CHAIRMAN BARBIERI: Right.

MR. Mac GILLIS: -- drove through it with staff.

So I mean, like Ron said, this is an old development, so there was -- there was a -- there's site plans with details showing them when they went through the site plan process back in the '70s that showed parking tracts with some garages actually on the detail shown right up to the edge of the pavement.

Assuming the garage was -- you open your garage door, and you were backing right onto the parking tract which was not uncommon. We don't allow parking tracts anymore, but that's where they're struggling with because they have old plans, and under Article 1 you have certain vested rights for those things that were clearly shown on a prior approval.

With code amendments we've done over the years, assuming they apply to new developments with the setbacks and stuff that we have to apply to these developments now, so there's this compromise between what somebody had and is vested for and relied up in good faith and the new amendments we've made in the code to townhouses and zero lot lines over the 20 years.

So that's why this -- the variance is here, but there will be two parking spaces in each one of these units, I believe, where the car would be accommodated inside the garage, so it's -- and the ones that are built I believe are the same way, have the 10-foot setbacks that I drove in.

I drove through the development. It was almost difficult to tell which units have been replaced because there was considerable attention by the HOA in working with the developer on making sure these replacement units did not disturb the character of the neighborhood.

CHAIRMAN BARBIERI: Okay.

MR. SULLIVAN: The other thing I would like to mention is that these variances have the approval of the homeowners association and the architectural board, at least I believe that's true.

MR. CARPENTER: That's correct.

CHAIRMAN BARBIERI: All right.

Commissioner Hyman.

COMMISSIONER HYMAN: I think that's the most compelling. I know this is happening in all

the communities that are aging. People are -- especially if they're on the water or on golf courses, people want to knock them down and build larger homes, and I do think if the POA and the architecture review boards approve it, I think that's pretty compelling.

Is there room in -- is there room in the driveway outside of the garage doors for your car to be?

MR. CARPENTER: Yes, ma'am. What we did because of the 1973 ULDC, basically in the plans that were approved at that time the site plan basically said zero setback, and the ULDC, the setbacks were set by the Building Department at eight and 10 feet because of the cable and utility easements.

So, in effect, all of the building permit information that we pulled on all of these townhouses showed the minimum setback to be eight feet or 10 feet, depending upon what that cable easement was.

The plans that we have designed have an 18-foot setback to the garage.

COMMISSIONER HYMAN: Okay.

MR. CARPENTER: If you look at all of -- the bulk of the automobiles made today, they're all in the 15 to 17 feet in length. So in effect we'll not only have the two cars inside the garage but also two cars outside the garage.

I think it's also important to note that the unit on the very north end of this six-unit complex owned by Mr. Lobdell, who is one of the objectors in letter form, was torn down in 1998.

It was not required to get a formal variance, but it was granted, in effect, by the Building Department, these similar variances.

His garage is 18 feet back from the road, and his cart garage is only 10 feet back from the road.

So we have -- what we're trying to do is try to square these with the 1973 ULDC and the site plan. We've got a 30-year old project, and now they're frame -- they're made out of frame --

COMMISSIONER HYMAN: We got it.

MR. CARPENTER: You got it.

COMMISSIONER HYMAN: We got it.

MR. CARPENTER: And the POA and the HOA are unanimous in their support.

CHAIRMAN BARBIERI: All right. All right. Thank you.

Any other questions from -- Mr. Carpenter, are you okay with all the conditions?

MR. CARPENTER: Yes, and this --

CHAIRMAN BARBIERI: On 21, 22 and 23?

MR. CARPENTER: These are the same basic, exact similar buildings, yes.

CHAIRMAN BARBIERI: Okay.

COMMISSIONER HYMAN: I'm going to move approval of a resolution approving a Type II zoning variance to allow replacement of a townhouse with a larger unit, reduction of front setback to a parking tract, and a reduction to the

building separation.

And this is on ZV2008-467.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion --

COMMISSIONER KAPLAN: I have a reservation -- I had a reservation, but the fact that the homeowners association approved it, that's why I'm in a position to second it; otherwise, I'd have severe reservations.

CHAIRMAN BARBIERI: All right. Motion made by Commissioner Hyman, seconded by Commissioner Kaplan.

Any other discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: Move approval of a resolution approving a Type II zoning variance to allow the replacement of a townhouse with a larger unit, to allow reduction of the front setback to parking tract and reduction to the building separation.

And this is on ZV2008-468.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: Motion again made by Commissioner Hyman, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: Move approval of resolution approving a Type II zoning variance to allow the replacement of a townhouse with a larger unit, to allow reduction of front setback to a parking tract and reduction to the building separation.

COMMISSIONER KAPLAN: Second.

COMMISSIONER HYMAN: This is ZV2008-469.

CHAIRMAN BARBIERI: Motion made by Commissioner Hyman, seconded by Commissioner Kaplan.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

Okay. We're going to take a 10-minute break so that the court reporter can take a few minutes.

Would you please all be back in here at 10 after 11:00.

(Whereupon, a short break was taken in the proceedings.)

MR. Mac GILLIS: Okay.

CHAIRMAN BARBIERI: Okay. We'll get started on Item No. 25.

MR. Mac GILLIS: Okay. We're on Page 12 of your agenda, the regular items.

Item 25, DOA2007-994, Ruth Rales Family Service.

Staff is recommending approval, subject to 15 conditions.

The applicant has agreed to all the conditions, and staff -- the only reason we put this on the regular agenda 'cause there was opposition.

So you'd like a presentation on this?

CHAIRMAN BARBIERI: Brief. Let's do a brief presentation.

COMMISSIONER HYMAN: This is Ruth Rales?

CHAIRMAN BARBIERI: Yes.

MS. LAWRENCE: Good morning, Commissioners. Joyce Lawrence, for the record.

Proposed is a development order amendment to reconfigure the site plan and to add square footage for Temple Anshei Shalom and Ruth Rales Jewish Family Service within the Villages of Orioles Planned Unit Development civic pod.

The 5.96-acre site was previously approved by the Board of County Commissioners on May 24th, 1983 for a 24,000 square foot structure with 470 seats for a place of worship.

The applicant is requesting to add a two-story, 22,000 square foot structure for an assemble, and it's a non-profit institutional use for the place of worship site, providing a total of 46,000 square feet.

To accommodate this new proposal the applicant is reconfiguring the southeastern portion of the parking area.

The proposed 22,000 square foot structure indicates a 2,250 square foot assemble area with 150 seats and 19,750 square foot -- square feet of administrative office and meeting areas.

The site plan indicates a total of 267 parking spaces with access to the site from South Oriole Boulevard and West Atlantic Avenue.

Staff has received 78 letters from the public. Fifty-seven of them are in support, and 28 are in opposition, and the opposition have -- those in opposition have concern with the noise and increase in traffic.

Staff is recommending approval of the request, subject to 15 conditions of approval as indicated in Exhibit C on Pages 548 through 550.

And this ends the report.

CHAIRMAN BARBIERI: All right.

MS. LAWRENCE: And I will turn it over to the agent if there are no questions.

CHAIRMAN BARBIERI: Would you give us a brief, just a brief, 'cause this was on consent, and we pulled it. I believe that's --

COMMISSIONER HYMAN: Didn't hear from the people --

MR. Mac GILLIS: No, this was --

MS. VAIL: Jennifer Vail --

MR. Mac GILLIS: This was on regular, but the --

MS. LAWRENCE: Regular.

MR. Mac GILLIS: -- only reason it wasn't on consent --

CHAIRMAN BARBIERI: Is because of the --

MR. Mac GILLIS: -- 'cause we had, I believe, one -- we had some letters of opposition.

CHAIRMAN BARBIERI: Okay.

MS. VAIL: Yes. For the record, Jennifer Vail, with Land Design South, on behalf of the applicant.

Like we said, we had requested to move to consent; however, there were the letters of opposition.

I do not believe that anyone is here today to speak in opposition. I believe everyone here today to speak is in favor of the project.

We are in agreement with the conditions of approval.

We do have some minor modifications to those conditions that we have been working out with staff. One is very -- just a renumbering. The other is just to show the status of completion for some of the old engineering conditions, and on the PalmTran it's just to change the trigger from plat recordation to building permit.

I could give a presentation --

CHAIRMAN BARBIERI: Let's hear from the public.

I have two cards. Dr. Lori Vinikoor, good morning, and Bernard Saklad, would you please --

COMMISSIONER HYMAN: I don't know that he wishes to speak.

CHAIRMAN BARBIERI: You didn't check your card if you wish to speak or not, so if you don't wish to speak, that's fine.

MR. SAKLAD: I do not wish to speak.

CHAIRMAN BARBIERI: Okay.

Good morning.

DR. VINIKOOR: Good morning. I'm Lori Vinikoor, here on behalf of the Alliance of Delray Residential Associations. I have a letter here.

CHAIRMAN BARBIERI: Okay.

MR. VINIKOOR: We're looking forward to the services that this senior center will provide to our community, and we represent about 68 homeowners associations, property owners associations in the area, and this is being brought right to the center of where it's really needed.

So we're happy about this.

CHAIRMAN BARBIERI: All right. Great. Thank you.

We need a motion to receive that --

COMMISSIONER HYMAN: So moved.

CHAIRMAN BARBIERI: Motion made by **Commissioner Hyman**, seconded by Commissioner --

COMMISSIONER ARMITAGE: Second.

CHAIRMAN BARBIERI: -- Armitage.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries.

Would you submit that to -- thank you.

All right. Are there any questions from the commissioners?

(No response)

COMMISSIONER HYMAN: I'm going to make a motion, but I want to disclose my husband works across the street at King's Point, and I -- I think it's really across the street.

No affiliation with this, no nothing, but I just wanted you to know.

I'm going to move for approval of development order amendment to reconfigure the site plan and add square footage, subject to all the conditions.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: We have a motion by **Commissioner Hyman**, seconded by Commissioner Kaplan.

Commissioner Brumfield.

COMMISSIONER BRUMFIELD: Yes, I have a disclosure to make. I did meet with the representative of the petitioner with regard to this project.

CHAIRMAN BARBIERI: Okay. Is there any other discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MS. VAIL: Thank you.

CHAIRMAN BARBIERI: Thank you.

CHAIRMAN BARBIERI: That takes us to Item No. 26.

MR. Mac GILLIS: Okay. Twenty-six is DOA/TDR2007-1400, Haverhill Acres, Pages 560 through 593.

Staff is recommending approval, subject to 56 conditions.

There are two motions on this item.

Joyce Lawrence will give us a brief presentation.

MS. LAWRENCE: Good morning again, Commissioners. Joyce Lawrence, for the record.

Proposed is a development order amendment for the Haverhill Acre Planned Unit Development. The 11.82 acre parcel of land was approved by the Board of County Commissioners on September 22, 2005 for 89 multi-family units.

The applicant is requesting to reconfigure the previously approved site plan to add 71 additional units, of which 29 will be through the transfer of development program for an overall total of 160 multi-family units.

Of the 160 units, 39 units will be designated as workforce housing.

The proposed site plan indicates 10 multi-family building, a 0.36-acre recreational site with a pool and a tot lot and a 0.23-acre private civic site and five dry detention areas, totaling 1.79 acre.

A total of 367 parking spaces is provided, and 40 guest parking spaces is shown on the site plan.

There's one access point from Stacey Street.

A brief history on this project. On July 21st, 2005, the Board of Adjustment recommended approval for two variances to allow the residential development to proceed in compliance with the PUD regulation.

The site has a 50-foot frontage along Stacey Street which is not classified as a collector or arterial street.

These variances were approved for legal access on an arterial or collector street for the PUD.

The Haverhill Acre development was first heard by the Zoning Commission on August 4th, 2005, to allow rezoning of the site from the RH zoning district, Residential High Zoning District, to Planned Unit Development to allow these 89 multi-family units on the 7.5-acre site.

During the hearing there were concerns that were raised regarding the design layout, and the site was postponed for 30 days, which the agent reconfigured the site and came back, and it was approved at the September 1st, 2005, Zoning Commission hearing.

On September 22, 2005, the Board of County Commissioners voted unanimously for the approval of the certification.

Again, there is an additional 71 additional units that are being requested, of which 29 will be through the development of transfer development rights, TDR, for an overall total of 160 multi-family units, and 39 will be designated as workforce housing.

Staff has received two letters from the public, one in opposition with no reason given, and the other from Palm Beach County Sheriff's Department in approval of the proposal as this would revitalize the community.

Staff is recommending approval of the

request and subject to 26 conditions of approval as indicated in Exhibit C on Pages 580 to 587, and six conditions of approval in Exhibit C-1, and these are for the TDRs and as indicated on Page 588.

This concludes my presentation.

I'll now turn it over to the agent if there are no questions.

CHAIRMAN BARBIERI: Good morning.

MR. IRAVANI: Good morning. Jeff Iravani, on behalf of the owner.

As --

CHAIRMAN BARBIERI: Excuse me one second. Commissioner Zucaro, you said you had a comment?

COMMISSIONER ZUCARO: Yes. Maybe I need a little education.

I said before I support the TDR thing in one of the other applications, and we've talked at length about predictability.

Here's my question, and, Jon, perhaps you're the person to answer it.

It was originally approved in '05 for 89 units, and since then we have a public policy that's been set in place that supports workforce housing. This comes back here now with an additional 71 units being requested, 39 of which will be designated workforce housing.

Is there some formula that applies that suggests what the ratio of number of units, additional units, versus the number of workforce housing that allows for predictability for the developers, or is every application for TDRs, workforce housing, created on an ad hoc basis?

MR. Mac GILLIS: I'll probably turn it over to Isaac from -- we've got Pat here.

Planning will address that. That's -- it's addressed in the sector analysis in the Comp Plan and the zoning code, but Pat will -- Rutter will explain that.

MR. RUTTER: Commissioner, good morning. Pat Rutter with the Planning Division.

Two points on the TDRs. They are required -- half of all TDRs are required to be workforce, so that part is well settled.

As to the density itself, this application -- the original application was approved prior to the workforce housing ordinance being in place.

The workforce housing ordinance requires different percentages at different levels of density. Standard density, there's a percentage.

PUD density, excuse me, there's a percentage required, and then the bonus density is a different percentage.

So there's not a set number. It varies in range, but the TDRs, there is a set established number.

COMMISSIONER ZUCARO: So the -- so it -- so, in essence, the developer comes forward and tries to fit some formula, and there's a negotiation between staff before it gets here?

MR. RUTTER: Not necessarily. The -- in a -- properties with land uses greater than -- at five units to the acre or greater are required to meet with Planning Staff prior to to determine their bonus density. We will work together and formulate that information.

The developer then will know what their bonus density is moving forward. Everything else is established.

The calculations for the required percentages are established. That's the only variable.

COMMISSIONER ZUCARO: Can I ask staff to just send me the relevant code so I can read it and understand it?

MR. Mac GILLIS: Sure.

COMMISSIONER ZUCARO: Appreciate it. Thank you.

MS. ALTERMAN: Yes. If I may, Commissioner, it's actually -- you passed out these books today, Jon?

MR. Mac GILLIS: Yes.

MS. ALTERMAN: It's actually in this update, the annual report that you've got in front of you.

MR. Mac GILLIS: And, also, Commissioner, if you turn to Page 574, the Planning Division has showed you how they calculate the workforce housing, just as Pat was going over --

COMMISSIONER ZUCARO: My question is really not to the workforce housing. I support that. It's the -- it's the increase from 89 to 71 [sic]. That's a 80 percent increase in density for what ultimately is a 39-unit workforce housing formula.

So I was just wondering if -- I've got my answer, so --

MR. Mac GILLIS: Okay.

COMMISSIONER ZUCARO: Thank you.

CHAIRMAN BARBIERI: Petitioner, would you move forward, please.

MR. IRAVANI: Thank you.

The site is about 12 acre. To our west is a canal, Lake Worth Drainage District. To our south is Town of Haverhill. To our east is going to be a proposed site for the elementary school. To our northeast, parking area for the school, and to our north is actually -- the land belong to the school. Not sure what they're going to do with it. At one time it's going to be a, I believe, Boys and Girls Club.

The site is about 12 acre, presently is vacant, demolished and vacant houses.

According to Sheriff Department it's vagrants out there, and there are, unfortunately, some illegal activity.

In 2005 it came in front of you, and we got the approval for 89 townhouse units. Unfortunately, that was the wrong project. It could not be built.

It wasn't viable, and, therefore, it never got built, and the new project, the owners, Lavage

(ph) Corporation, have a lot of experience in infill, urban infill developments, and now we are presenting this project, which is 160 units. Twenty-nine of them are TDR, actually. The rest of them are allowed under a bonus density and actual density.

The site has the -- at the entrance they have a cul-de-sac with a focal point. We are building a schoolbus shelter in here for the kids so the schoolbus can turn around.

The entrances are gated. We have sidewalks throughout the project. We have a pool that Joyce mentioned and the lot tot [sic] an amenity.

In addition to that, we are providing funds, about 68,000 to the Park Department, and the owner, when developing this project, they'll be working with Commissioner Koons' office and the School Board to try to accommodate the school as much as possible.

As you know, the County is reconstructing Stacey Street for school with the signal at Stacey and Haverhill, and this project is providing \$72,000 fund toward that construction.

In, addition to that, the owners have been working with the Sheriff Department, and that's one of the reason we have a letter of support from Sheriff Department for this project.

We are providing a substation in the clubhouse for the Sheriff Department, and this is a place that they really think they need it, so it'd be a constant present in the project.

One of the reason the project needs to be at 160 units is because this is the only way this project can be developed and be viable in this location.

I think -- I spoke with Town of Haverhill rep and the other gentleman. Their opposition is to the density, why do we have to have that many. And the answer is this is the only way this project can work.

Now, if you look at Stacey Street, and as you have on your staff report to the east, the Stacey Street, the entire area is high density. Actually, they have some high density 12. I worked one of those projects about 20 years ago. It was a HUD project.

So we think the density is correct. I think it's a beautiful project. It's an improvement for this project.

We also worked with OCR, and we appreciate Ruth for that. We had a meeting. We had a list of property owners from the County from OCR.

We had a meeting with them in -- about a couple of months ago. We went through the project, and overwhelming portion of the residents were in support of this project.

And, Mr. Chairman, this is my presentation.

CHAIRMAN BARBIERI: Okay. I have a couple questions for you.

I'm 100 percent in favor of workforce

housing. I mean the policemen, firemen, teachers need a place to live. So I have no issues with your workforce housing.

I'm concerned this project, along with one of the other ones, that you're cashing out \$87,000 to the Parks Department for recreation that would have been required on this site.

I mean with all of these children, the school across the street, I don't understand why we can't figure out a way to use the money on this site with the recreational requirement on this site, rather than giving it to the Parks Department, and it ending up somewhere else.

I know that Verde Elementary worked with the city, maybe with the County back then before they were annexed. There's a park next to the school that's jointly shared by the school. The school uses it during the day, and then it's available for other people when the school's not using it.

Can't we do something like that? The school's across the street, right? It's right there next to you.

Why can't the money be used on the school property to have some kind of a joint park that's available for the school use in the daytime and this community's use otherwise?

MR. IRAVANI: Okay. The question is the use of \$87,000?

CHAIRMAN BARBIERI: Well, you're cashing out \$87,000 that's going to -- it says the petitioner will cash out 87,091 balance of the recreational requirement.

My question is if you can't find a place on your site for the -- for that recreational requirement why can't we do it on the school property and have some credit?

You're already doing some enhancement of the school property. Is the school right across -- across the way right there?

So why can't we -- School Board representative, would you come up.

Why can't we work something out where that money stays in this project?

MR. OWENS: For the record, Michael Owens, representing the School District.

The property that we own on the north side of Stacey Street will be used. At this point we're still designing the school which is to the east of this property.

The property across the street we'll be using primarily for overflow parking and some drainage, and I believe there was some talk of a Boys and Girls Club at this time.

CHAIRMAN BARBIERI: Boys and Girls what?

MR. OWENS: Boys and Girls Club, or there's some -- some talk, some negotiations for a club facility of some sort, but right now, those are the plans that we have for the property, I think, to the north of this and slightly to the east.

CHAIRMAN BARBIERI: Okay. So where will

the school be -- like on the other side of Stacey Street?

MR. OWENS: No, no. The school will be adjacent to this property to the east, directly adjacent, and abutting to the east of this property.

So we have a zero 60, which is the Stacey Street elementary school.

CHAIRMAN BARBIERI: So my -- I guess my question then is why on that -- in that buffer area where they're adjacent, why can't we have this \$87,000 used on that property so that the school can share the recreational area with this development, and it's put to use right there for those children that go to that school and live in that community?

MR. OWENS: Well, the school itself has some recreational facilities, plus I believe at the intersection of Haverhill and Stacey Street there's an existing neighborhood park which isn't going to be touched at this point, which is my understanding. So there is a neighborhood park that these -- that the population can avail themselves of.

So right now we didn't have -- we weren't in any discussions with regard to additional recreational facilities.

CHAIRMAN BARBIERI: Okay. So you're saying the school has all it needs in the way of recreational area for the school, all the money it needs for this.

MR. OWENS: Well, we can always take more money, but on site we have what we need with -- what our educational specifications require.

CHAIRMAN BARBIERI: All right. I still would like -- staff, I'd like you to work this out if you can.

The \$87,000 they're cashing out, if we're going to approve this project -- I'm not sure if we're going to approve it or not, but if we approve this project, I'd like to see the 87,000 not cashed out but used somehow in the -- on the property, whether it's on this property or on the school property.

Certainly, I can't believe the School Board would turn down an \$87,000 worth of cash to put into their property for recreational facilities. I'd like to see that money used for this area.

So if you can see if you can work that out between now and the County Commission hearings, I'd appreciate that.

COMMISSIONER HYMAN: There are four -- see, one, two -- four dry detention areas. Are they going to be low or basically usable for play?

MR. IRAVANI: Thank you. That's a great question.

The dry detention actually -- they're going to be high enough so they can be utilized for play area and recreation.

The Lake Worth Drainage District canal along the side in here, it drains to C-51. The

elevation on it is around eight and a half, and at the most is going to be around 10 or 11.

This dry detention is going to be around 12 or 13. So they are going to dry up fairly quickly after the rainfall, and they will be available, I think especially this one (indicating), makes a great soccer field.

So the dry detention even though, you know, they're meant for drainage facilities, would be available and could be used for amenity, as well.

COMMISSIONER HYMAN: And then you also are showing the tot lot, and there's got to be equipment on that; right?

MR. IRAVANI: That's correct, tot lot, right.

COMMISSIONER HYMAN: So I think you're good, and I -- you know, I don't think the County Rec Department's going to give up money to the School Board, even though I, you know, we have the greatest proponent of the School Board here, but I don't see them giving up the money, so --

COMMISSIONER KAPLAN: Mr. Chairman, I think that I would like to clarify for the members of the public.

You have so stated it, but I'm going to repeat it, that you are giving your personal opinion as to the recreational area which you said -- presupposes that it's approved, but there has been no agreement that this project will be approved until this full Commission votes on it after it hears the members of the public.

CHAIRMAN BARBIERI: That's right. I said that.

COMMISSIONER KAPLAN: I don't want the public to think any deal has been made.

CHAIRMAN BARBIERI: No.

COMMISSIONER KAPLAN: No deal's been made.

We listen to all the members of the public who want to be heard and to the other commissioners for their opinion before we vote on it.

Thank you.

CHAIRMAN BARBIERI: I think -- I think I said that. I said assuming this is approved, and I said I don't know if it's going to be approved or not, this is what I'd like to see if it moves forward.

All right. Let's go -- unless any of the commissioners have comments, we'll go to the public.

Ms. Alterman.

MS. ALTERMAN: I just want -- I would hate to see you making the recommendation that the money only be used for the -- that cash-out money, as I think it was said, I can't see the Park Department giving up some of that money.

There is -- at least there currently is a park at the end of the street they may want to use that to improve that park or do something else.

So I think that we need to be careful about how we restrict that money.

CHAIRMAN BARBIERI: I'm fine with it being

used in the area. You know, the other petition said within five miles. Kids are not going to go five miles to a park.

If you can use it in the area, seems to me that if the Parks Department doesn't want to work with the School Board, shame on them. I -- we need to have more inter-governmental opportunity here to work together, especially with the school system. So I see no reason why we can't start doing that if we haven't done it.

I know Verde did it with the city or the County back when they built the park, and there's a sharing arrangement. I don't know why that can't be done. If there's a neighborhood park, the money could be put in that neighborhood park, that's fine.

I just would rather not see us allow petitioners to cash out. It goes into a fund and then the County uses it miles away from a development where it was going to be required in the first place, so. If there's plenty of parks, that's fine. If they can use the money in the area, that's what I'm suggesting you do. That's my opinion.

We'll take the people that wanted to speak again. And I'll call your names. There's three of you, Howard Brandenburg, come to one podium, Janice Rutan, the other, and Thelmalee Brandenburg, you said you do not wish to speak. I'll read your -- into the record after the other two -- after the other two speakers come up.

Mr. Brandenburg.

MR. BRANDENBURG: Howard Brandenburg again.

My main objection, of course, as the gentleman stated, was density, and I live on the east side of Haverhill just one block south of Stacey Street, so just to give you a relationship to where I live.

And I know that the whole neighborhood, quite a bit of it, is one-half acre and one-acre lots in through here. I know Stacey Street is -- does have apartments on it.

And he answered one question, one objection -- other objection I had was a substation possibly, and there is going to be a substation there, it seems like, because we still hear the helicopters driving -- flying over Stacey Street. Even though the Sheriff's Department has improved, I know that. It's not every day now. It's probably ever third day instead.

Excuse my sarcasm here.

And the other part would be the school with the apartments, 367 parking places plus school traffic, Stacey is not -- to me, doesn't seem like it's a street for that much traffic right now.

I don't know what the improvements are going to be for that, but it needs to be something, and I know there's a red light going to be put at Stacey Street and Haverhill and probably Pine Ridge, which offsets from Stacey Street. It

will be an offset traffic light there.

So that's -- that's really my objection, is the density and, hopefully, the substation that goes in.

CHAIRMAN BARBIERI: All right. Thank you. Janice Rutan.

MS. RUTAN: I'm Janice Rutan. I'm also representing the mayor, Joseph Kroll, who was unable to attend today.

Town of Haverhill submitted a letter, and we'll enter it into the record again, opposing this project, but in avoidance of reading the letter in its entirety, the main objective that the town has is the timing of the construction of this project, along with the timing of the construction and the completion of the school.

We are extremely -- or the mayor and the council are extremely concerned over the safety of the children coming in and out of Stacey Street while this project is being constructed.

The Town of Haverhill has entered into an interlocal agreement with the Palm Beach County School District in which it will be constructing an eight-foot cement wall along the town's southern boundary as to where the school -- and we are going to ask if that could be considered, as well, as to continue this eight-foot boundary up through the town, and I believe it's through Pine Way where it abuts our residential area again, which are the one, you know, story single family, large lots within our town.

But mostly we are very concerned about the safety of the children.

I did want to clarify. We understood that there is not going to be a realignment of Stacey Street. It is going to remain the way it is as it stands now, where originally it was going to be realigned.

CHAIRMAN BARBIERI: Engineering, is that the case? Stacey Street will not --

MR. CHOBAN: I believe she's right. We did talk about realignment, and I believe that has now ceased. I don't believe we're going to -- it's going to continue on its current course.

CHAIRMAN BARBIERI: Okay.

MS. RUTAN: And, again, the mayor's letter could be entered into the record, but the main objection is the proximity of the multi-family and the intensity of the project abutting our residential area.

CHAIRMAN BARBIERI: Okay.

COMMISSIONER ARMITAGE: So moved.

CHAIRMAN BARBIERI: We have a motion to accept the mayor's letter into the record by Commissioner Armitage.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Seconded by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

Would the School Board representative come back up to the podium, please.

What can we -- what do you think we can do to safeguard the kids while the construction would be going on if this project is built at the same time that the school's being built? Are the kids going to --

MR. OWENS: Well, I mean the usual safeguards that the construction companies employ at each and every one of our construction sites, and we have safety fencing, and we've got, you know -- I mean at this point with Stacey Street it's rather slow ingress, egress, anyway, so I mean the trucks coming in, there are only certain times of the day where they would be constructing the project.

Yeah, I guess they're -- you know, they have people watching to make sure that they're -- you know, there'll be no interference with or no interaction with the general public with the construction company.

It's a virgin site so there'll be a lot of stuff happening on the property itself.

Other than, you know, delivery times, and I'm not sure, you know, what else, you know, we can do, but, you know, like I said, they will safeguard the area, so there should be any, you know, minimal interaction.

CHAIRMAN BARBIERI: Staff, would this -- would this project be being built at the same time that the school's being built?

MR. Mac GILLIS: I know the Zoning staff had -- has reviewed the site plan and approved it as -- I believe it was last month, so they had a very time -- time-sensitive construction plans on that.

MR. OWENS: I mean for, yeah, I mean for the School District we were -- we are looking to open the school August, 2009.

That being the case, we'll probably start, you know, preliminary site work this summer, and you'll see substantial construction coming in the fall of 2008.

CHAIRMAN BARBIERI: And if this project was approved, when would you start building?

MR. IRAVANI: Our estimate would be January of '09, I believe.

CHAIRMAN BARBIERI: Okay. So the school's going to be open while you're building.

So that's -- that's a concern. The mayor's representative voiced that concern. I mean if you're going to have a major project like this being built while this -- after the school is open, we're going to have construction trucks coming in there next to where these kids are going to be walking.

We're going to have to have safeguards in place to make sure that -- this is an elementary school, too, right?

MR. OWENS: Right.

CHAIRMAN BARBIERI: So these are small children. They're on their bicycles or whatever that are probably unsupervised as they're going to school, so they could get in the way of this traffic.

So I mean I'd be concerned about making sure that Engineering looks at how we time everything to keep the kids in a place, if we have to make places for them that are -- that are blocked off so that they get to school without being -- interfering with the construction traffic.

I don't know what the layout is of all this, but certainly that should be taken into consideration if this project is approved.

MR. IRAVANI: I believe the project would be completed prior to the school opening up.

CHAIRMAN BARBIERI: Prior to?

MR. IRAVANI: Yes, 'cause if you start in January of '09, the project should be done in six months, and I believe they were looking at September of '09 for opening up?

MR. OWENS: August '09, but there'll be substantial completion by June or July of '09.

CHAIRMAN BARBIERI: So we should be -- then we should be okay on that. Okay. All right.

Is there any other -- anybody else -- I'm sorry, there was a card from Thelmalee Brandenburg that basically says please limit the number of units. There is already a high crime rate on Stacey Street. Please include a police substation at this location.

Is there anybody else from the public that would like to speak on this item, on No. 26?

(No response)

COMMISSIONER HYMAN: I'm going to move approval of the Development Order Amendment to reconfigure the master plan and site plan and to add 71 units, subject to the conditions.

COMMISSIONER KAPLAN: Second.

CHAIRMAN BARBIERI: All right. We have a motion by **Commissioner Hyman**, second by **Commissioner Kaplan**.

I do have a letter that was mentioned from -- addressed to me as Chair of the Zoning Commission from Palm Beach County Sheriff's Office signed by Colonel Michael Gaugher (ph), Department of Field Operations, which heavily supports -- the Sheriff's office supports the construction of this project.

COMMISSIONER ZUCARO: Mr. Chair, just to be clear, subject to the condition, I think that your point in the earlier application and now here about the use of funds is a very valid point, and I think that -- but I -- I don't think that I can support it as a condition of approval because I think that it's a policy question that we should ask or make a recommendation to the County Commission about and ask staff to have some direction in terms of a policy question as to the cash-out options that developers are allowed, and,

secondarily to the question of whether there can be an interlocal develop between the County and the School Board or the County and the municipalities to consider the use of the funds in a cash-out proposal to the nearest park, even if it's not a County park.

COMMISSIONER HYMAN: It wasn't part of my motion.

COMMISSIONER ZUCARO: Okay.

CHAIRMAN BARBIERI: And I -- and I -- if this does go forward to the County Commission, and it was just a recommendation that I had that you pose to the County Commission.

MR. Mac GILLIS: In the future when these come up, I'll ensure that somebody from the Parks Rec is here 'cause I apologize, 'cause this did come up at the last meeting, and I did speak to Jean Matthews, and she did take your consideration, and she did amend her staff recommendation.

CHAIRMAN BARBIERI: Okay.

MR. Mac GILLIS: So --

COMMISSIONER KAPLAN: All of our decisions, Mr. Chairman, as you know, are merely recommendations to the County Commission that makes the final decision.

So we can recommend anything that we want that we think is appropriate for the benefit of the community. Whether or not the County Commission decides to go along with us is entirely up to their discretion.

CHAIRMAN BARBIERI: You think they would doubt our wisdom, Commissioner Kaplan?

All right.

COMMISSIONER HYMAN: Take a vote.

CHAIRMAN BARBIERI: I think we're -- are done with that one.

COMMISSIONER HYMAN: Take the vote.

COMMISSIONER ZUCARO: Take the vote.

CHAIRMAN BARBIERI: The motion was made by **Commissioner Hyman**, seconded by Commissioner Kaplan on that one.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER HYMAN: Move for approval to allow the transfer of development rights to allow for the transfer of development rights for 29 units, to designate this application as the receiving area and to allow 29 units to be purchased at a reduced cost of \$1 per TDR, subject to all the conditions.

CHAIRMAN BARBIERI: Do we have a second on --

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion made by **Commissioner Hyman**, seconded by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. IRAVANI: Thank you.

MR. Mac GILLIS: Item 27, ZV2007-2009, ET [sic] Office/Warehouse, Pages 594 through 632.

Staff is recommending approval of this Type II variances, subject to five conditions.

Carrie Rechenmacher will present this.

Before we -- just for several -- the benefit of several of the new commissioners, this application is located in the urban redevelopment area, which is the area the Planning Division is working on currently to identify redevelopment.

It's basically a geographical area, but it comes down to the two corridors of where the most activity is going to take place.

It's on Military Trail and Congress, and this site here is approximately five lots north of the Morgan Hotel that you saw earlier this year where there was considerable number of variances, 'cause right -- the Board of County Commissioners, I believe, had transmission this week regarding the amendments to the Comp Plan to address the URA.

So we're in this period between the adoption of Comp Plan amendments and ULDC amendments, so some of these variances, hopefully, staff has reviewed them for consistency where we're going with the Comp Plan and ULDC.

So I'll turn it over to Carrie.

CHAIRMAN BARBIERI: All right. Carrie, before you start, the record should reflect that Commissioner Zucaro has left permanently, and Commissioner Armitage will be voting on this.

You're leaving, too? Yes, you're correct.

Both of the alternates, Commissioner Armitage and Commissioner Bowman, will be voting on this -- on the rest of the agenda items today.

MS. RECHENMACHER: Yes. Good morning. Carrie Rechenmacher, for the record.

The applicant is requesting 10 variances, one for lot width, two for setbacks, one for parking and six for the landscape buffer.

As Jon Mac Gillis pointed put, this is in the urban redevelopment area, and it's also in the

priority development area.

It's located on the east side of Congress north of Ohio Street across from the Trump golf course.

There's an aerial on Page 602 showing you the general location, and on Page 603 is the site plan.

I thought there was someone objecting -- well, there actually was one person objecting who called, and his site had actually been developed 20 years ago, and I clarified to him that if he did come in now, he could be requesting these variances.

The applicant has been working very closely with the Planning Division. They're here to answer any questions.

We're still going to have some site plan issues when it comes to a final site plan as far as making sure this works with -- as far as these conditions and working for the urban redevelopment area.

We've been working with Treasure Coast Regional Planning Council. We had a mini-charrette with them.

Staff is recommending approval, subject to five conditions.

And thank you. I'll be here for any questions.

CHAIRMAN BARBIERI: All right. Rather than giving us -- we have no -- we have no cards.

Are you in agreement with all of the conditions staff is recommending?

MR. BLACKMAN: Yes. We agree with the findings of staff as it relates to the standards for the variance and also the conditions.

CHAIRMAN BARBIERI: All right. Is there anybody here from the public that wishes to speak on Item No. 27?

(No response)

MR. BLACKMAN: And just for the record, my name is Wes Blackman. I'm representing the applicant.

CHAIRMAN BARBIERI: Thank you. That's important.

COMMISSIONER HYMAN: I'm going to move approval of the resolution approving a Type II zoning variance to allow a reduction in the front and rear setbacks; the elimination of the west right-of-way buffer; the reduction in width of the south right-of-way buffer; elimination of required trees, hedges, the west and south right-of-way buffers; reduction of required parking; elimination of the foundation planting on the west side of the structure; a reduction in width for landscape terminal islands; and a reduction in the minimum lot depth, subject to the conditions.

We find that are special circumstances and conditions that exist that are peculiar to this parcel of land, that the special circumstances and conditions do not result from the actions of the applicant.

Granting the variance does not confer upon

the applicant any special privileges.

A literal interpretation and enforcement of the terms and provisions of the code would deprive the applicant of rights commonly enjoyed by others.

Granting the variance, it's the minimal variance that will make possible the reasonable use of this property.

Granting of the variance will be consistent with the purposes, goals and objectives, the policies of the Comp Plan and the code, and the granting of the variance will not be injurious to the area.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: Motion was made by **Commissioner Hyman**, seconded by Commissioner Brumfield.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

MR. BLACKMAN: Thank you, Commissioners.

CHAIRMAN BARBIERI: You're welcome.

CHAIRMAN BARBIERI: Takes us to Item No. 28.

COMMISSIONER HYMAN: Anybody here for 28?

MR. Mac GILLIS: Item 28, ZV2008-310, Grove MUPD, hours of operation variance, Pages 633 through 656 of your backup.

Staff is recommending approval of this Type II variance related to 24-hours of operation, subject to five conditions.

Joyce Lawrence will give us a brief presentation.

MS. LAWRENCE: Good morning again, Commissioner.

Joyce Lawrence, for the record.

Proposed are two Type II variances to allow a 24-hour emergency medical service clinic located within Building A, which is the southernmost building on the site plan.

This is to be adjacent to residential use, to allow the concrete wall along the north property line to be within 30 feet of the existing ficus trees.

The subject site currently supports a nursery use, and we currently have a final site

plan in the system which has been approved for medical offices.

This 10.18-acre parcel site is located at the northeast corner of Boynton Beach Boulevard and the Florida Turnpike.

The adjacent property to the north supports townhouses. To the east we have single family units. To the south across from the 220 ultimate right-of-way for Boynton Beach is the northbound interchange for the Florida Turnpike.

To the west is the Lake Worth Drainage District, which is followed by the Florida's Turnpike, which provide a significant grade separation from the subject site.

Just to give you a brief history on this petition, on January 25th, 2007, the Board of County Commissioners approve a rezoning of the subject site to MUPD for the development of 115,000 square feet medical and professional office use. This approval was amended on January 24th, 2008, for medical office use only. The square footage remains the same.

The plan, as I've said before, is currently being processed for a final site plan approval, and it all depends on the variance of the wall which is along the north property line.

There's an existing condition where a variance was approved on April 5th, 2007, to allow a wall to be placed directly on the north property line of the proposed site; however, a variance should also have been processed to allow the wall, which is approximately 15 feet, to be at a closer proximity to the existing ficus tree on the adjacent property.

Today the applicant is requesting to allow a 24-hour operation emergency medical service to be adjacent to residential use, and this is pursuant to Article 3 which states commercial hours of operation.

The second variance is for controlled plant species which is to allow the structure to be closer than 15 feet to the existing ficus tree.

At the time of publication staff has received 34 letters, one in support and 33 in opposition with concerns to security, increase in traffic, noise, and there are some that we received that stated no reason.

Staff is recommending approval of the request, subject to the seven criterias.

There are five conditions of approval, and they are shown on Pages 642 to Pages 643.

COMMISSIONER HYMAN: Okay. Are you done?

MS. LAWRENCE: We are also recommending approval based on information from that -- it was a request from the adjacent property owners to have this wall as a security measure to prevent intruders from their site, and also the 24-hour medical service clinic was moved fartherest [sic] from the residential site.

And that concludes my presentation.

COMMISSIONER KAPLAN: Madam Vice Chair, we have a letter here from a Thomas Baird who has

requested a continuation.

I'd like to find out if Mr. Baird is present. If he is, I think we ought to hear his application before we hear the essential matters before us.

COMMISSIONER HYMAN: Well, there's no motion to postpone this item. I'm going to go to the petitioner first, and then we'll talk --

COMMISSIONER KAPLAN: You're -- you're acting Chair, so I'll abide by your decision.

COMMISSIONER HYMAN: Sorry, Tom. Get a little exercise back and forth. Petitioner.

MR. BROPHY: Good morning or good afternoon, close to it, anyway.

Jeff Brophy, with Land Design South, agent for the petitioner.

We actually did receive that letter from Zoning staff from Mr. Baird, and I think there was -- the reason for the postponement was to answer some questions that they had in regards to this petition.

I think going through the presentation and having the experts that we have here we're going to be able to answer those questions.

With that, the location we're talking about is the northeast corner of Boynton Beach Boulevard and the Florida Turnpike, just west of Hagen Ranch Road, and to -- I mean to the west we just have the Turnpike.

Really, the affected area that we're talking about is the Grove PUD. It was -- back then it was known as the Indian Hills.

There's the townhomes to the north of us and the single family to the east.

Just very briefly, to go over the site history again, this was land use changed back in '96 from MR-5 to Commercial High Office. 2007 it had a BCC zoning approval for the medical and professional office development, 115,000 square feet.

February '07 there was an agreement signed between the MUPD and the PUD in regards to certain landscaping, security, lighting conditions that weren't in the resolution, but there was a private agreement between the two.

In January of '08 there was BCC approval of a Development Order Amendment to allow all office. It didn't raise the square footage. It remained at the 115,000 square feet.

February this year we submitted the variance for the 24-hour stand-alone emergency room, and in March, 2008, we submitted the variance for the wall location and DOA to modify the conditions of approval. And just to clarify, I just want to make it clear that the two variances really don't have anything in common.

The variance for the wall location is something that should have been done back with the original petition. It has nothing to do with the 24-hour request.

This is the approved site plan. We have

two -- three buildings, I'm sorry, A, B and C. Building A is a one-story medical office building.

Building B and C is a two-story medical office building, roughly 10 acres, 115,000 square feet.

Access has been approved for both off of Boynton Beach Boulevard and Orchid Grove Trail, and there's a landscape buffer that obviously surrounds the site and a security and privacy wall along the north and northeast sections of the property.

I'm going to run through very quickly the wall variance because that's the simpler of the two.

It's to locate the eight-foot landscape wall within 30 feet of the existing ficus trees along the north property line. Again, this was agreed to in the previous resolution. The variance should have been applied for at the time. It wasn't caught until just recently during permitting, and the resolution is going to be modified to include a concrete panel wall, not a block wall.

We don't want to damage and kill the existing ficus trees on the Grove PUD property.

The north property line, as you can see, this is the shot of the existing ficus trees, and that wall is going to sit roughly about 15 feet south of those.

Moving on to the variance, why we're all here today, this is to obtain approval for a Type II variance for a 24-hour stand-alone emergency room. This is going to be limited to Building A in the first floor only on the site plan.

If you look at the graphic that's up here, that's the one farthest to the south along Boynton Beach Boulevard.

The use is listed under medical office in the ULDC.

We have previous traffic approval for this, based on that use, but what we did do was we did do additional analysis based on the fact that this is a use somewhat new to the area, and we looked at a couple different things.

We looked at it based on a medical office.

We looked at it based on even hospital counts. We looked at based on clinic counts, and the medical office that it is approved for now is actually the highest of the three.

So the proposed use is actually going to have a lower generator than what we have approved.

We also looked at the existing -- JFK is going to be the tenant in this facility.

We actually looked at their average trips for their existing emergency room between April 14th and 18th of this year. It was roughly about 52 trips per day, and between 2:00 a.m. and 6:00 a.m. we had the lowest number of trips. On average we're talking about 0.6 to 0.8 visits per hour in some of those early morning hours.

What it is? Well, this is -- it's basically an emergency room without the hospital.

It's fully licensed by the State of Florida.

There's currently four located state-wide. I think the closest is in Aventura, and it separates itself from a hospital because it does not need a certificate of need.

This is -- it's licensed by the State, but it's not based on beds. There's no overnight stay. That's why we don't need the certificate of need, but instead of myself going through this, and I can talk all day about zoning issues, but I'll have Gina Melby of JFK, the CEO, to come up and actually talk about the specific use.

MS. MELBY: Good morning. Thank you for allowing me to be here today.

I do want to expand upon what Jeff is sharing with you, that our goal is a proposed plan. We obviously have to go through the appropriate process in order to meet State and Medicare guidelines in order to own and operate this particular facility.

As Jeff had shared, it is a freestanding operation. It is affiliated as a department of JFK Medical Center, and it will truly be supported by emergency room physicians, the appropriate medical staff in terms of nursing, paramedics, et cetera.

We will continue to work very closely with EMS as we develop the appropriate criteria for this location. There is precedent set within the State right now. As Jeff shared, there are four facilities operating, and there are many more coming forward.

I did provide a letter to Mr. McGill [sic] with regards to any legal questions, and the letter that has been also produced representing Bethesda so that you could clearly understand that what is approved at the State level and by CMS at this time, and that obviously we would do everything in accordance with law.

In addition to any of the operations itself, we're looking at assuring that we have the appropriate support for an emergency department in that location. We will build it according to what we anticipate as far as projected visits.

One of the things that we would be doing differently is to look at a pediatric component to this 'cause we know that there's young families in the area, and that we want to support the community that surrounds this as we move forward with this particular plan.

If there's anything else specific, I'll be more than happy to answer that, but I think that that's the most important pieces to ensure the group here as far as what we plan to do going forward.

CHAIRMAN BARBIERI: Can you just explain for me, please?

Is this different from a walk-in clinic? This is -- this is going to be just like an emergency room in a hospital?

MS. MELBY: Yes. It will replicate an emergency room in the hospital. It will have the technology that is supported in current emergency

room departments.

It will provide the same level of medical staff personnel in this particular setting, and it is definitely different from an urgent care model.

One of the things that have come forward on a national basis and on a State basis is that we understand that there's constant concern about the overcrowding of emergency rooms, the over-use of emergency rooms, the appropriateness of patients arriving to an emergency room, and this will be an outreach to make sure that we can help decompress the hospitals 'cause we are currently all challenged with that.

It looks at sub-specialty coverage. This is a department of the hospital. We ensure the same physician support as operating it as a department of the hospital, as well.

CHAIRMAN BARBIERI: All right. And you do have pediatric facilities -- you said, I think you said that, pediatric --

MS. MELBY: In our proposed plan we are looking at developing a pediatric component, and, once again, everything we have right now is not -- we're not -- it's not been set forward because we don't have this outlined yet, and we have to send this to the State for approval like we would normally do for any department of our facility that's in an outlying area.

But it is proposed, and we are going to be having a pediatric component as part of that.

CHAIRMAN BARBIERI: Okay. 'Cause that -- one of my concerns would be -- I mean West Boynton has been built out quite a bit with restricted -- I mean age-restricted communities, and I know that within the -- in that area there is approximately 3,000 new units that came on line and some are still being built for not age-restricted, which would include the Canyons, which -- where the new elementary school is being built, Sunset Palms.

So I mean one of my concerns would be that there are pediatric facilities if this project is approved because that certainly is a need -- if this project is approved, that would be a need in that area. So I would want to see that in that area.

MS. MELBY: And that's absolutely part of the plan as far as what we've proposed to include within that infrastructure.

CHAIRMAN BARBIERI: Yes, sir.
Commissioner Bowman.

COMMISSIONER BOWMAN: Yeah, on your board you indicate that there's four others located in the State.

As being a director at Glades General Hospital in the past I'm a little familiar with it.

Aren't those designed for more rural settings than West Boynton?

MS. MELBY: I think it -- in the past it's been designed that way, but I think as we move forward -- and I do have a Medicare ruling here that I would like to also provide to you that

clearly outlines some of their -- why they've moved forward to allow this to occur. (Reading:)

Growth and demand for hospital emergency services has resulted in a number of hospitals seeking to expand their emergency departments for off-site locations.

So it is not restricted to rural. If you look at Aventura particularly, it's not in a rural area.

So this is changing within our State right now because of all of the issues that are going on within our own communities regard to emergency services.

COMMISSIONER BOWMAN: It seems to me that with the other -- Bethesda Hospital planned on 441 and Boynton Beach Boulevard that these two facilities are going to be very close to each other, and are they both going to be able to operate profitably because this is a profitable business, and I --

MS. MELBY: I can't answer that.

COMMISSIONER BOWMAN: -- think there's a conflict here, that the intent of those emergency care things are made for a more rural setting than what you're proposing here.

MS. MELBY: I don't believe they're made for rural settings only, but I will share with you that things related to a new hospital is still under review and under appeal, and I can't say when that's going to take place.

MR. BANKS: We look at zoning issues.

COMMISSIONER HYMAN: We don't look at profitability.

MR. BANKS: We can't look at the licensing issues or the competition between hospitals.

COMMISSIONER BOWMAN: Okay.

COMMISSIONER HYMAN: You know, it's ironic because on the news this morning on Channel 5, big plug for Channel 5, they -- they have a -- something that's going to be shown later today.

They said the average wait time in a Florida emergency room is close to five hours. Five hours. I don't want to be in a waiting room five hours, but --

CHAIRMAN BARBIERI: All right. We're going to go to the public. We've got many, many cards, so --

MR. BROPHY: Mr. Chair, if I -- if you don't mind, I --

CHAIRMAN BARBIERI: I'm sorry. I thought you were finished.

MR. BROPHY: -- just want to finish with my presentation. I just want to go over some of the community concerns.

CHAIRMAN BARBIERI: Okay.

MR. BROPHY: I'll try to go quick.

Again, I guess why this location -- and that's a good question, it's something I probably should have brought up before, before Gina came up, but this is the location of the -- of JFK, Bethesda in Delray, and what we did was we looked at a five-mile radius outside of that, and it

really gives you a good idea of where our location is and where the services are needed.

Obviously, the West Boynton area is in need of an emergency room. Currently they have to travel across and down, you know, a lot of lights to either get to JFK or Bethesda.

In addition, we -- there's three elementary schools in close proximity, as well as two middle schools. We really feel this is going to complete the area.

And in terms of Bethesda, again, even if they do come on line years down the road, we plan to be up and running relatively quickly.

We're in for permits. Building permits are in now. So, really, these buildings can be complete in about a year.

In terms -- just to clarify some of the issues in the letter that was issued from Bethesda in terms of the postponement, I'm going to try to hit as many as I can, and if we need to answer any other additional questions, we can do that.

Number one, the variance and the development order amendment that are in the system are independent of one another.

Again, this comes even down to the modification of the hours of operation that's in the resolution. That was a clean-up item that should have been taken care of a couple years ago, but it never was, and what it was was it restricted retail.

There used to be a retail component to this. Obviously, that hasn't been in existence for years, so that really needs to be cleaned up and taken out. So has nothing to do with the variance you're going to vote on today.

The emergency room needs to be associated with an acute care hospital.

It is. It's -- it will be associated with JFK. We'll be licensed by the State. Licensing occurs after local approval.

In the letter it stated that, you know, as of right now we don't have any of those licenses, but I don't know anybody who's going to shell out \$14 million and then go get their local zoning approvals.

ULDC defines this use as a medical office. That's been approved and confirmed.

Uses consistent with the MUPD zoning designation, and we already have the full approvals from BCC.

No transfer agreement in place.

Again, that's something that occurs after the local zoning issues are taken care of.

Again, this is the approved site plan. Just to give you some context, we are talking about the one building closest to Boynton Beach Boulevard only. It's approximately 550 feet away from the closest home to the north and 370 feet away from the closest home to the east.

We did have three neighborhood meetings. We were actually postponed once before because we wanted to get to the neighborhood meetings and to

COBWRA.

We had a meeting at the Grove with the residents, and that's really where we heard a lot of their concerns and started to look into what we could do to mitigate those concerns.

We had an additional meeting with COBWRA growth management, and the Groves residents came out, and, again, we did another presentation. We clarified some issues that I think were open from the first meeting.

And then we had a third meeting with a few Grove appointees, COBWRA and Commissioner Aaronson, and it was really at this meeting that we discussed the mitigation measures that we would put in place in terms of self-imposed conditions of approval that are written into the record here today.

As Joyce stated, the neighborhood concerns, very quickly, were traffic, security, entrance points and lighting, and in terms of traffic I've already talked about the technical aspects of the traffic and the approvals that we have.

In terms of security, JFK has agreed, although they would have, anyway, to have 24-hour manned security within the building, and actually they're going to roam the site, as well. We'll accept that as a condition of approval.

We also want to explain that the wall is being continued. The security wall is being continued all the way down to Boynton Beach Boulevard along the eastern property line.

The entrance point off Orchid Grove Trail will be closed to all traffic, including any ambulances, between the hours of 9:00 p.m. and 6:00 a.m. All access will be from Boynton Beach Boulevard.

And lighting. Lighting is going to be restricted in those after hours to just our building, and then the rest of the lighting will fall in line with the resolution that they have in place in the restrictions they already have.

So just to briefly go over the conditions of approval, these are the self-imposed, location of the 24-hour use to be located in the first floor of Building A only, closed access off of Orchid Grove Trail between the hours of 9:00 p.m. and 6:00 a.m. to all vehicles, site plan to be revised to show the wall along the entire eastern property line, lighting for the 24-hour use to be limited to Building A and parking.

Additional landscape along the north property line as there is concern about the view of the lights so we can add additional landscape along the north property line to take care of that, and Building A to have the manned security and to roam entire site after hours.

Recommendations. We do have the Zoning staff recommendations of approval, as well as COBWRA recommendations of approval.

We're here to answer any questions that you have.

Thank you.

CHAIRMAN BARBIERI: Before I go to the public, do any of the commissioners have any questions for the petitioner?

(No response)

CHAIRMAN BARBIERI: All right. As I started to say before, we have a lot of cards. Mr. Baird, you'll be the first speaker. We'll give you a little extra time since you're an attorney representing, I believe, Bethesda Hospital.

Everybody else, we're going to limit you to two minutes so we can get through everybody here so we're not here 'til --

MR. BAIRD: Actually --

CHAIRMAN BARBIERI: -- the wee hours of the morning.

MR. BAIRD: -- if it would -- I would prefer that the residents go first.

COMMISSIONER HYMAN: Okay.

MR. BAIRD: I think they've been waiting a long time, and some of them are very anxious to speak.

CHAIRMAN BARBIERI: That's fine.

MR. BAIRD: I'm happy to go last 'cause I'm paid by the hour.

CHAIRMAN BARBIERI: All right. COBWRA, did you want to speak now?

We'll take Barbara Katz, president of COBWRA, and then Bernard Gordon, would you please come up to the other podium.

MS. KATZ: Good morning. I'm Barbara Katz, president of COBWRA, which represents 87 communities with over 92,000 residents in the West Boynton area.

For over 27 years we have been concerned with our area's quality of life, and we have always fought for the healthcare needs of the West Boynton communities, most recently, the anticipated West Boynton Hospital to be built on Boynton Beach Boulevard and 441.

We've all heard of the long hours of waiting in the existing emergency rooms. Because the population in our area continues to increase, both seniors and families, the emergency center is needed in our area.

Almost everyone agrees the facility is needed, but the location is not popular.

The developer has stated quite firmly that this is the only location, and he has considered other areas.

We are aware of the concerns of the Grove residents. We have met with them twice. We have worked with the group representing them. We have also met with the developer, JFK representatives, Commissioners Aaronson and Kanjian, to discuss and resolve these concerns.

However, we have an obligation to look at the big picture of our 87 communities, and with all unknown new projects there are concerns and conditions that have to be addressed.

These concerns are real, and the developer

has worked with COBWRA and the Grove residents to take care of them, and this is going to sound very much what Jeff just said.

Security. JFK has agreed to have a manned security patrol 24 hours.

Entrances and exits. The one on Boynton Beach Boulevard will be open at all times. The second entrance, which is shared with the residents of the Grove, will be closed in the evening for incoming traffic, but the outgoing only lane will be accessible by ambulances or vehicles leaving the center and will allow them to make a left turn at the light, at the traffic light.

Lights at night will be low levels and only at the center itself, which is closer to Boynton Beach Boulevard than to the homes. Distance from the center to the closest home is 550 feet.

Landscaping to cut -- help cut down on the noise and privacy of the residents will be doubled at the north end of the property where the homes are.

This type of center is a new concept, and JFK has told us that they will be meeting with fire/rescue to work out procedures and also will be studying the situation regarding secondary transportation to a hospital from the center, if needed.

This was a difficult decision for COBWRA.

We respect our communities' needs, and we try to work with them, but at the same time we must do what is best for our entire West Boynton area.

Our delegates have voted to support this variance request, and, therefore, we are here to ask you to support it, too.

So I thank you.

CHAIRMAN BARBIERI: After Mr. Gordon would Barbara Lewis come up, and then after that, Gordon Lunt, would you please be prepared to speak next.

MR. GORDON: My name is Bernard Gordon. I'm just representing myself as a -- as a homeowner at the Grove.

I tried to understand what Barbara Katz was just talking about, looking out for the benefit of the whole west Boynton Beach area, and they seem to feel that this is the best location for this here project.

As I understand, this here project is an emergency room clinic, and originally they were approved for rural areas.

The site at the Grove is not a rural area.

We have three hospitals in our area. They may be over-utilized, but there is a fourth one on line that is coming.

As far as when is enough going to be enough for the Florida residents, senior citizen residents, as I am, that people keep changing the laws, to bend the rules to suit developers, to suit money management people?

I moved here in 1996 with my wife. We moved into a retirement community. It was told to

us, or to myself, that that Grove community would remain a residential community.

The entrance to the Grove has on both sides a big structure that says The Grove. Didn't -- never mentioned anything about being the JFK emergency room clinic, never mentioned anything about being a three-story or three-building project, which had been mentioned, I don't believe I would have committed myself to the Grove development, community. I probably would have lived elsewhere.

CHAIRMAN BARBIERI: Mr. Gordon, try and wrap it up for us.

MR. GORDON: I'm trying, sir, but you -- you know, I just --

CHAIRMAN BARBIERI: We have a lot of people who'd like to speak.

MR. GORDON: I know -- I know you have a lot of people.

CHAIRMAN BARBIERI: Like to give everybody the opportunity to do that.

MR. GORDON: I beg your indulgence. I mean there are certain -- certain things that I am not aware of, there are certain things that I am aware of.

There was a -- I know there's a -- there's a -- there's an issue of disclosure in the State of Florida to protect -- to protect residents and protect potential buyers, like my myself and people who have bought into the Grove.

It was never mentioned at the time that we bought it that it was going to be for commercial use. It was only at that time -- at that time for residential area.

Where was my protection or disclosure that it was going to be for commercial use? It was never disclosed to me. Now, there is a law for disclosure in Florida.

CHAIRMAN BARBIERI: I'm not sure what -- what the salesman told you.

MR. GORDON: Well, it affects the material --

CHAIRMAN BARBIERI: I understand, Mr. Gordon.

MR. GORDON: You understand --

CHAIRMAN BARBIERI: I have to get through 40 people who want to speak so you're going to have to summarize.

MR. GORDON: Okay.

CHAIRMAN BARBIERI: I gave you extra time. I'm not trying to cut off people, but we have to get through everybody that's been sitting here for hours waiting to speak.

MR. GORDON: What I'm trying to summarize is that I, myself, I'm against the -- the 24-hour concept of an emergency room clinic.

We've -- we've been -- always giving in. In other words, first it was supposed to be a building, just a -- for medical office buildings, which across the street they have plenty of medical office buildings. So that got approved, this got approved. Then they -- they applied for

variances, they get approved.

CHAIRMAN BARBIERI: Mr. Gordon.

MR. GORDON: Now you got a variance for a 24-hour clinic.

CHAIRMAN BARBIERI: Mr. Gordon, if I give everybody here ten minutes to speak, we're going to be here until 7:00 o'clock. You have to wrap it up, sir.

MR. GORDON: I don't think you'll be here until 7:00 o'clock, sir.

CHAIRMAN BARBIERI: I have a lot of people who want to speak.

COMMISSIONER HYMAN: I'm going to ask that we go to the next speaker. It's not fair.

MR. GORDON: All right. In conclusion, I just ask you people just to reconsider the 24-hour variance.

CHAIRMAN BARBIERI: Barbara Lewis, would you please come up to the podium, and Gordon Lunt.

Ms. Lewis, you're on.

MS. LEWIS: I'm Barbara Lewis.

I received a last-minute e-mail from Jeff Brody [sic] of Land Design South outlining conditions of approval that were discussed and not voted on or approved in any way during our meeting with Commissioner Aaronson on April 15th attended by myself, Richard Diana, Joyce Ilowitz, and Dee Rosenberg.

This requires a 60-day postponement for further review with the builder.

I am speaking on behalf of our community of mostly retired seniors and presenting to the Zoning Board petitions signed by the vast majority of homeowners protesting the 24/7, 365-day emergency room proposal, our community of 501 homes primarily consisting of older seniors who will be greatly affected.

We have only one exit and one entrance on Orchard Grove Trail in and out of our community.

The added traffic of ambulances, delivery trucks, patients, employees will impact the safety of residents leaving and returning to our homes; therefore, the addition to the already existing heavy traffic on Boynton Beach Boulevard from and to the Turnpike, Super Target, Anasca office building which houses a Med Express and future approved plans for two banks and a professional building, plus a fire/rescue station.

The new traffic will surely impact in our quality of life and safety.

As you can see, we are very well represented by our community.

Thank you.

CHAIRMAN BARBIERI: Thank you.

Mr. Lunt, you'd be next, and then Joseph Cohen, would you please come up?

MS. LEWIS: I wanted --

CHAIRMAN BARBIERI: Okay. We need a motion to --

COMMISSIONER HYMAN: I'll so move.

COMMISSIONER KAPLAN: I'll move to accept the petition.

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: We have a motion by Commissioner Kaplan, second by Commissioner Brumfield.

All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries.

MR. LUNT: For the record, Gordon Lunt.

Our community spent an inordinate amount of time compelled to concern ourselves with the indecisive developer and a continuing evolution of schemes and plans for the use of the subject site.

First, a landscape nursery, then mixed use retail and townhomes, then an office park, then a medical office park, and now the addition of a 24-hour emergency medical clinic and medical center or medical center.

What -- what's next on the docket, guys? We've pretty much had it with changes with this -- this site.

An emergency room, an emergency clinic. This is an extremely intense commercial use with very intense egress and ingress requirements that are further complicated by people who are confused, who are in an emergency situation and who may act irrationally in trying to get in and out of a driveway that's already very congested and very active.

The emergency center across the -- the emergency response center and Fire Department across the street uses this same intersection to come and go to respond to calls, a lot of sudden movements, a lot of change in the traffic pattern as a result of that.

I feel that emergency vehicles coming and going from this facility will create even additional traffic load and complications that haven't been anticipated, that the level of intensity of that traffic and that type of traffic and what it creates have not been considered by the traffic analysis.

We feel that we're caught and squeezed in a crossfire by the competing medical community, the County Commissioners and the Zoning staff with little or no input from our community regarding our safety and security, let alone our tranquility and our right to peaceful coexistence.

In the area immediately east of the Turnpike there are currently four easily identifiable existing commercially zoned parcels of vacant land available where this 24-hour facility could be located, either as a part of a medical complex that's already existing or in the development process or as a stand-alone facility, vacant parcels, other than the subject parcel.

Each of these parcels are large enough to support the signage, which hasn't been discussed today, the parking and circulation, as well as the access and the egress that this facility will require to safely find, enter and exit it.

Each is alternate -- is already zoned. Each -- each of those parcels is already zoned, properly zoned. Each is in an area of more intense commercial use, and each would not create the traffic circulation mix and intensity, noise pollution and security problems that locating this facility on this subject site will.

CHAIRMAN BARBIERI: Mr. Lunt, try and wrap it up for us.

MR. LUNT: I will.

Additionally, there are other commercially zoned parcels available on the west side of the Turnpike at the commercial center -- shopping center being built by GL Homes.

What is being proposed here is much too intense a use, a use for a simple medical office park and is pushing beyond the limits and the intent of the zoning code in this case. This type of facility should be located on a freestanding site.

At best, I would request the Commission not approve this application at this time.

At the least, postpone a decision on it until our residents and the Commissioners can be truly informed about its critical operation, its licensure, its value to the community and its -- its actual necessity.

Thank you very much.

CHAIRMAN BARBIERI: You're welcome.

MR. LUNT: Appreciate your time.

CHAIRMAN BARBIERI: Thank you.

AUDIENCE: (Applause)

COMMISSIONER HYMAN: It's not appropriate to applaud.

CHAIRMAN BARBIERI: Sandra Jacobs, would you come up next, please.

Mr. Cohen.

MR. COHEN: My name is Joseph Cohen.

Once again, environmental safety. The increased traffic will be dangerous to our already congested infrastructure. To deal with traffic situation of a 24/7 facility will be intolerable.

The developer has no real plan for traffic safety on this already congested roadway.

The entrance to Orchid Grove Trail is situated by the Turnpike on the north and southbound. The traffic is already overcrowded.

Twenty-four/seven will increase the traffic and will create a backlog of cars that will block the entrance of cars to the new 24/7 complex and our community.

It will create hazardous traffic situation on Boynton Beach Boulevard, Turnpike, Orchid Grove Trail intersections for all, especially EMS vehicles.

Orchid Grove Trail will become a very dangerous road to go in and out of. It is an accident waiting to happen.

Security. The developer has no real plan for security. Maybe they will go around the residence.

Medical facilities are already

comprehensive for today and the future, such as walk-in clinics near Boynton Beach Boulevard. Bethesda Hospital coming to the west county.

EMS response time on average is less than five minutes. Numerous doctors at the immediate area, and Bethesda Health City in the immediate area with multiplicity of services.

Developer is not consistent on what services that will be available. Always changing. We received conflicting information of what would be treated.

Number of cases is inconsistent. First we were told 20 per day. Now we were told 75 to 100 per day, which averages to 18,000 a year, which is overwhelming.

Right now Orchid Grove Trail handles annually 200,000 vehicles.

By having a 24/7 lighting requirement change, causing a very disturbing nighttime surroundings to the area.

The quality of life of our senior community will be diminished because of increased noise, traffic, lights, increased traffic, poor entrance and exit.

When we purchased our homes at the Grove, we never thought, our wildest dreams, that a lot adjacent to our community would be zoned for 24/7.

Any type of business operating 24 hours a day, seven days a week, will make our situation unbearable.

In addition, this is a for-profit organization, and how does that benefit our community?

Thank you for your time.

CHAIRMAN BARBIERI: You're welcome. Thank you.

After Mister -- after Ms. Jacobs, would Mr. Joseph Bloom please come to the podium.

MS. JACOBS: My name is Sandra Jacobs. I live on Lemonwood Way, which is basically across a lake from Orchid Grove Trail, and we're the fifth house in.

We were not given any notification. We're 300, what, 3,000 feet -- whatever the footage [sic] is.

We would be directly affected, as would our block and many other people by lights, sirens and other things that go on during the day and at night.

You say you will close off the road, Orchid Grove Trail, from 9:00 at night to 6:00 in the morning. Who will be stopping vehicles from coming in and out?

There's just too much going on there for having an emergency room, which is like having a small hospital, and even more so at our complex. Our complex is residential.

If we allowed and went for a little bit of -- we'll put the medical facility, which isn't even needed as far as the offices, but as far as an emergency room, there are many other places for it in Boynton Beach, and we'd like to see it go

there and not disturb the living arrangements of our people.

Thank you.

CHAIRMAN BARBIERI: You're welcome. Thank you.

After Mr. Bloom would Sylvia Cohen please come up to the podium.

MR. BLOOM: Almost directly across Boynton Beach Boulevard from the Grove -- my name is Joe Bloom -- in a park-like setting is a multi-building medical clinic, a rehabilitation center, bordered by a fire and rescue center on which a new medical office building has just been built.

Why didn't this facility go there?

As a previous speaker mentioned, there are vast areas on Boynton Beach Boulevard west of the Turnpike as yet undeveloped where there'd be plenty of room for a -- for this facility to be put. Why was it put at the Grove? Why?

Why of all the places for this to go was it put at the Grove?

There might be an answer to that question somewhere. It's being put on an area that originally we used for over 10 years as a tree farm, a perfect neighbor. Now after several changes we're going to be getting three medical office buildings.

I guess it could have been worse. It could be a tire recycling plant, but we're taking three medical office buildings.

I'm living at the West Boynton area now for about 10 years, and there's been explosive growth in all of Palm Beach County, including West Boynton, and looking and driving around Palm Beach County things look nice.

This Board, this Zoning Board apparently is doing a good job because the streets look nice.

The neighborhoods look nice, and even the commercial areas, for the most part, look nice.

Every now and then I get a surprise if I pass a street, a pastoral street every now and then, and in the middle of the block lies a gas station. I wonder why, but I imagine in most boards and commissions every now and then a mistake is made.

I ask the Board please don't make a mistake here. Please reject this petition to go 24 hours.

CHAIRMAN BARBIERI: Thank you.

After Sylvia Cohen will be Ron Jacobs. Please come up to the other podium.

Yes, ma'am. State your name for the record.

MS. COHEN: My name is Sylvia Cohen. I live in the Grove, and I want to say good afternoon to all the Commissioners.

Our community is a gated 55-plus community of 501 families located on the north side of Boynton Beach Boulevard at Orchid Trail. The guard gate is on Orchid Grove Trail and is set back from the Boynton Beach approximately 200 feet.

The intersection of Boynton Beach Boulevard and Orchid Grove Trail is regulated by a traffic light. The south side of the intersection is the northbound entrance to the Florida Turnpike.

Westbound traffic in recent months has increased as the new developments on State Road 7 and Lyons Road continue to be populated.

In the morning and evening a considerable increase of traffic has occurred by people attempting to go to and from work.

The community has just one entrance and exit. To share this with the intended entrance to the medical complex and 24 hours, seven-day per week emergency room will make the traffic pattern in and out an extreme hardship to residents by increasing the already significant delay that occurs at peak traffic time when trying to enter and exit the Grove, and also many accidents will occur. Who is responsible?

The offer to move our guard gate further down Orchid Grove Trail to facilitate the turnaround of vehicles that miss the entrance to the medical complex is insufficient to rectify the problem.

The security in our community is a major concern of our residents.

Patients brought into the emergency room will be delivered by EMS, but there is no plan for the return of these patients to their communities.

Ambulatory patients who receive emergency treatment and do not require hospitalization will be released at the door of the facility. Some of them may wander into our community.

The small size of our community does not permit us to carry the expense of a large security patrol.

The change in zoning from medical facility to 24/7 week, facility is particularly worrisome since the security at night becomes more problematic.

Since the application of the Bethesda West Hospital has already been approved by the Commission, and since it will contain a 24-hour, seven day per week emergency room, the zoning change to this facility will erect a redundancy that will greatly change the tranquil functioning of an existing established senior community.

In summary, I would ask the Zoning and Building Department to do a full traffic pattern review to reevaluate the concerns of our community.

I believe that the study will bear out our concerns, and I ask that you deny the granting of the use variance requested.

Thank you.

CHAIRMAN BARBIERI: You're welcome. Thank you.

Dolores D. Rosenberg, would you please come up after Mr. Jacobs.

Yes, sir.

MR. JACOBS: Commissioners, thank you for

hearing me. My name is Ron Jacobs.

It seems to me that we have a conflict between two Goliaths, JFK and Bethesda and the Grove and the David is in the middle.

I live 300 feet to the east of this proposed project.

I sat at a meeting with the gentleman, who described the project, several months ago, and we were assured that we were going to -- that it would be medical buildings that would have limited access, and it would just be for daytime use. All right.

I also heard him say that there'll be like 0.7 entrances per hour during the -- during the off-beat times, like all night.

Commissioner Hyman says there's a five-hour waiting to get in the emergency rooms. Who should I believe?

Now, picture this, 1:00 o'clock in the morning a car door slams, 1:30 in the morning, a siren goes off, 2:00 o'clock in the morning, loud voices.

Is this what you're going to subject us to all night long every night of every day of the year?

Please put yourself on our side of the podium. This is not the right place for this facility. There's got to be someplace that is in a commercial area that would not affect private citizens.

Thank you.

CHAIRMAN BARBIERI: Thank you.

After Ms. Rosenberg would Joyce Ilowitz please come up to the other podium.

State your name for the record, please.

MS. ROSENBERG: Dolores Rosenberg, and I live at the Grove, and I'd like to thank you for hearing us today.

First thing I have to say is I was at that meeting on April 15th with Joyce Ilowitz and Barbara Lewis, Richard Diana, and we made no agreement with the JFK folks or COBWRA. They were just giving us a little advice, and we were taking notes and listening, but we were just -- we just went there to talk.

There was no agreement, and we weren't even appointed by the community. We just made an appointment with the Commissioner. So that's how that went.

But I just want to say again, and I hate to be redundant, but it really doesn't make sense to just squish in emergency room in the middle of the Turnpike and Orchid Grove Trail. I mean you really have to see this road to appreciate it.

It's -- it's just one way in for us. We don't have another exit on the opposite side of the community. That's the only way we get in and out, and the traffic there is just intense, and this -- we have a guard booth there, and right before the guard booth, that's where they'd have to make a left turn, cutting us off, to get into this facility.

And there's sort of a blind turn there, as well, so it's hard to see somebody making a left, and if you're making a left, it's hard to see people coming out of the community because of the guard booth in the way, and there's shrubs and so on.

It's really -- every now and then -- we have like a tree farm now, and every now and then a truck goes in there, and there have been plenty of close calls, and the tree farm, I've only seen a truck a week, maybe.

So it's really a horrible thing. Now Joe already discussed how many trips, the 200,000 plus another 140. It's -- it's just ridiculous.

So I'd just like to ask you to deny this because the 24/7 use is just horrible.

Our security guards are not equipped to take care of foot traffic, so anybody walking out of those openings -- oh, and the other thing.

They said they're going to close those things off at night. They're going to close it off with one of those little arms that goes like this (indicating), and they're going to allow traffic out.

That's not closing it off. The only way to close it off is to wall in the whole thing and not use Orchid Grove Trail at all day or night and just leave us alone.

On the other side we have other -- like on the Anasca building, that cuts into our property, too, but they don't use our entrance. It would be just horrible for us.

So please don't approve this project, or at least just close off Orchid Grove Trail altogether.

Thank you.

CHAIRMAN BARBIERI: After Ms. Ilowitz, would Seymour Schran (ph) please come up to the podium.

MS. ILOWITZ: Good afternoon, Commissioners. I'm not going to try and be redundant. You've heard all of our arguments.

CHAIRMAN BARBIERI: Your name.

MS. ILOWITZ: Joyce Ilowitz.

CHAIRMAN BARBIERI: Thank you.

MS. ILOWITZ: Frankly, on our first meeting with the JFK people at our condominium they said they would not treat triage, cardiac, stroke.

The second time we met them they changed their story. They then said yes, we are going to treat triage, stroke and cardiac.

Now we are hearing something about a pediatric. This is something brand new. We never have an opportunity to find out who they are, what they're going to do, and, frankly, I don't trust them, and I don't think you should trust them, either.

Thank you.

CHAIRMAN BARBIERI: Is Mr. Schran here? I don't know if I'm -- okay.

Joe Applebaum (ph), please.

UNIDENTIFIED SPEAKER: Sir, I don't think there are any more speakers.

CHAIRMAN BARBIERI: Okay. Nobody else wants to speak? Anybody who wants to speak come up to the podium, please. Okay.

The Vice Chair will read the other comments into the record that -- for those of you that didn't want to speak that wanted your -- read in.

COMMISSIONER HYMAN: Louise Pirrello said, "The emergency vehicles competing with Grove drivers, many elderly, presents dangerous situation."

Ethel Cohen says, "I do not wish to compete with emergency vehicles entering and exiting on the same access road as our community, particularly at night or times of poor visibility."

Sandra Gordon says, "Against motion for 24-hour operation."

Roberta and Seymour Alter say, "A 24-hour emergency room adjacent to our community is a hazard to the health and welfare. There is an entrance in our community that will create hazardous driving conditions to our senior citizens."

Henry Ferris says, "Overcrowding -- overcrowded conditions, disregarded the senior citizens' feelings."

Dr. Arline Gold says, "The dangerous inherent in the 24/7 facility will affect the hundreds of seniors in the Grove."

Claire Lieberman, "Additional traffic in the community would be extremely hazardous."

Stanton Lieberman, "With the overload of additional traffic would be very hazardous to the senior citizens."

Sydell Stufsky, "This is an accident waiting to happen. The -- something -- and emergency vehicles, great hardship to us. Our residents are truly -- something -- cope with the -- can't cope with the effects of 24-hour -- something -- will cause."

Martin Harris, "I am opposed to the variance to allow a 24-hour operation adjacent to a residential area."

Barton Turner, "Against building for purpose of 24/7 medical building. Traffic patterns will lead to accidents going on Turnpike and out of Grove."

And George Davis does not want a 24-hour.

CHAIRMAN BARBIERI: All right. Thank you.

Would you state your name for the record.

MR. DIANA: Yes. My name is Richard Diana. Thank you for your time.

I've sent you letters outlining our objections. You've heard all of the objections today.

I have one major point to make. That major point is that this facility that they are offering to us is 24-hour/7 emergency room clinic.

Emergency room or hospital facility, is

nothing but a hospital. It is a hospital facility, as they admit, and as such, it is a change of use, not a change of hours, a change of use.

And as a change of use, it requires much more scrutiny. It has to be looked at, and an entire new process has to be done. What they are doing is a blatant attempt to bypass all of these steps and to just go in by asking for a different change of hour and eliminate having to go through all of the scrutiny that is necessary.

In addition, Commissioner, you brought up the pediatrics as something that you would like.

Pediatrics does not require 24/7. You could go into any of the medical buildings that are already approved here, and the pediatrics are a side issue that should not even be considered.

This is something new that the lady from JFK just brought up, possibility -- possibly to placate you.

Therefore, I really strongly suggest that you reject this offer and at worst table it so that it could be examined much more thoroughly.

Thank you.

COMMISSIONER HYMAN: What was your name?

COMMISSIONER KAPLAN: Mr. Chairman, if I may?-

COMMISSIONER HYMAN: What was your name?

MR. DIANA: Richard Diana.

COMMISSIONER KAPLAN: Mr. Chairman.

COMMISSIONER HYMAN: Did you fill out a card?

MR. DIANA: Pardon?

COMMISSIONER HYMAN: Did you fill out a card?

MR. DIANA: I filled out a card, and I sent you letters.

COMMISSIONER KAPLAN: Mr. Diana, may I ask you a question, sir?

MR. DIANA: Yes.

COMMISSIONER KAPLAN: You're objecting to the 24-hour emergency treatment.

Would the community object to emergency treatment exclusive of 24 hours, just during daylight hours?

MR. DIANA: That is the same as a walk-in clinic.

COMMISSIONER KAPLAN: No. I just want your opinion, sir.

MR. DIANA: But we don't need it be the 24/7.

COMMISSIONER KAPLAN: Thank you.

CHAIRMAN BARBIERI: Mr. Baird.

COMMISSIONER HYMAN: Sixty seconds enough for you, Tom?

MR. BAIRD: Yeah, actually, I don't need to speak. I've heard enough.

My name is Thomas J. Baird. I'm distributing a response to the applicant's application. It goes through the justification statement. It goes through the seven criteria.

I am here as a -- representing two

participants. Under your rules that would be Bethesda Medical Systems and Barbara Lewis, who you heard from earlier. I'm representing her individually because they -- condominium association of which she's vice president has not yet given me the authority to represent them.

I'm going to testify actually as to zoning variances as an expert, and I want you to know why I'm an expert to do that.

First of all, I am a certified planner by the American Institute of Certified Planners and have been for 15 or 20 years.

I am an attorney licensed in the State of Florida since 1985, and I have been certified by The Florida Bar as an expert in city, county and local government law.

I'm a former county attorney, assistant county attorney, and my responsibilities included advising the Board of Adjustment which used to consider variances.

I've been qualified as a witness, as an expert witness, in planning and zoning in the Counties of Palm Beach, Martin, Broward and Dade County.

I've been a municipal attorney since 1991 for various municipalities, at least 10.

And so my testimony today, although it will include some attorney argument, it really is in the nature of expert testimony as to the facts and as to the issues and as to the standards governing the award or not, of a variance.

As your attorney advised you, this is really not about medical facilities and what service area they serve and where they serve and who they serve. This is about seven criteria that have to be met.

But since the issue has been raised about medical facilities and emergency rooms, you all should know that but for JFK's opposition to the West Bethesda facility, that facility would be up and operating, serving these residents and other residences in the West Boynton area, and that facility would have the availability for pediatric emergency room visits, if necessary.

So I think it's -- to the extent that we're going to talk about facilities let's consider that there is a facility coming on line.

It is on appeal in the District Court of Appeal because of JFK's challenge to that certificate of need.

I've distributed my analysis to you, and I'm going to go through them momentarily, but I want you to understand something because I think most of you are new to considering variances because I know the Board of Adjustment handled that activity before, and, you know, most variances -- I've sat here and I've watched you approve variance after variance.

No one has particularly objected to those variances, and no one has, as yet, really said here's the standards and here's how the standards are met. That's what I'm going to take you

through now because that's what this hearing is about.

It's not about medical facilities, although it is about a medical facility to the extent that what this really is is a use variance, which is illegal.

A use variance means they're actually changing the use. They're not varying a setback.

They're not varying the height that's entitled. They're not varying some kind of physical activity or action on that site.

They're changing the use from medical offices to an emergency room.

Now, most of you -- if you'll -- if you'll follow along with me, there's a couple of things that are very important in these hearings. One is the burden.

The burden's on the applicant here to demonstrate with evidence that they've met that seven criteria. It's not on the community to demonstrate that they haven't met it. It's on them to demonstrate they've met it.

The evidence that they have to prove, according to the Florida courts, is they've got to demonstrate that without this variance they cannot make any reasonable use of their property, and in the outline you'll see the citations to legal authority that support that statement.

That's a well-founded, well-decided issue.

The courts have no disagreement with that issue.

So going through the criteria, are there any special conditions and circumstances peculiar to this property. No, there are not.

The applicant didn't offer you any evidence of that. They offered you a theory. The theory was there was a need for an emergency room.

Normally, in the classic variance case you're going to have some facts showing that the parcel is irregularly shaped, that it has a peculiarity to it which makes the development of that parcel impossible.

The classic example is a zoning variance that's needed because a lot is triangular in shape, and someone attempting to site a building on that lot cannot meet the side setbacks because of the triangular nature of that lot.

Because they can't meet the setbacks without the variance, it's impossible to develop that lot, so they ask for variances so as to be able to meet the physical characteristics of that lot.

The applicant's justification statement makes a conclusory statement with respect to this standard.

It says, "Due to the size and shape of the subject property there are special conditions and circumstances peculiar that are not applicable to other parcels of land."

Well, what are they? You didn't hear any evidence of what they were. It's not a triangular lot. In fact, if you look at the site plan, it meets all the setbacks. The buildings are spaced.

There's no evidence that this is an irregular shaped lot with a -- that requires a variance.

The staff report, too, is devoid of any evidence or any facts that demonstrates that there is some peculiar shape to this lot that requires a variance in order that it be used.

What the staff report recites, which is really a recitation of some of what the applicant has presented, is that there are special circumstances because the closest emergency medical center for the West Boynton area are JFK and Bethesda and Delray Medical Center, which are eight to 10 miles away.

This is not a peculiarity of the lot that requires a variance. Even if this met the legal standard, which it doesn't, it's incorrect because Bethesda has an approval for a facility which will include an emergency room, which will serve pediatrics and everyone else within two miles of this property.

Number two, the special circumstances and conditions are a direct result of the actions of the applicant.

The applicant's saying that this is something that occurred over which they had no control, but in fact that's incorrect.

The facts are that in 2007 the applicant was granted an amendment to its development order to convert its use from professional offices to medical offices which are permitted in that zoning district.

In that zoning district there -- and in the ULDC there is a section of the code from which they're now seeking a variance, and they knew this when they changed the use to medical office, that limits the hours of operation for all commercial uses that are adjacent to residential zoning districts.

What the applicant is asking is that it be treated unlike everyone else, and that it be exempt from that Unified Land Development Code regulation that requires a limitation on hours to protect the residents who live adjacent to commercial areas.

Not only did the applicant come to this variance, but they also accepted in 2007 a voluntary condition further restricting the hours of operation. So they knew one year ago that they had restrictions on their property.

Now they're saying there's some special circumstance that is not the direct result of the applicant. It is a direct result of the applicant.

It's well settled law that an owner of property cannot assert that there's a hardship where the hardship is self-created.

A hardship is self-created, and thus a variance is not justified, whereas here the applicant has purchased and owned the property with the knowledge of the zoning restrictions.

They have owned this property with the knowledge of that ULDC restriction on hours of

operation. They have owned that property with the knowledge of the voluntary condition that they accepted.

Number three, granting the variance would confer on this applicant a privilege which is denied by the Unified Land Development Code to all others.

Although the staff report and the applicant try to explain how they meet the standard, the fact of the matter is that the ULDC limits the hours of operation to everyone, every commercial property adjacent to residential districts. That's a code provision.

The applicant wants to operate 24 hours, which is contrary to that code provision. Granting the variance would give this applicant the right to operate at variance with the code while all other property owners would continue to have to operate within the provisions of the County code.

It also ought to be noted that this provision of the County's code was adopted specifically to protect -- protect residents such as those in the Grove.

The law on that is that neighboring property owners, such as Barbara Lewis, are entitled to rely upon existing zoning regulations and the continuation of conditions of approval for development projects. They're entitled to rely on it. That's what the court says.

Number four, a literal interpretation of the code's restrictive hours of operation would not deprive the applicant of rights enjoyed by other parcels.

This is the converse of the previous argument. All commercial uses have this restriction if they're adjacent to residential.

The applicant hasn't been singled out for this restriction. It exists for everyone to protect those residents.

Number five, the variance requested is not the minimum variance required that will make a reasonable use of the property possible.

And this is really an argument about this being a different use, because the evidence before you is that they already have a reasonable use of their property. They've got 115,000 square feet of medical offices. They can fill those offices up with the doctors who will be coming to the West Bethesda facility.

It's well-settled law that the applicant is not entitled to a variance unless there's no reasonable use of the property. They got a reasonable use.

Number six, granting the variance is not consistent with the Comp Plan or the ULDC.

This -- I misspoke earlier. This is really the use argument.

A variance to permit an emergency room would actually be a use variance because the applicant's requesting use of the property that's currently not permitted in that MUPD. What's

permitted in that MUPD is medical offices.

The applicant proposes an emergency medical service clinic. It will serve as a triage and allow patients to receive emergency medical services. Clearly, this is not a medical office or clinic use as defined by the ULDC.

The ULDC defines that use as an establishment where patients are admitted for examination or treatment by persons practicing in form of healing or health-building services.

That differs from the definition of hospital or medical center. What they're proposing is a medical center.

A facility licensed by the State of Florida -- they told you they're going to obtain their licenses -- which maintains and operates organized facilities for medical or surgical diagnosis, overnight and outpatient care and treatment of human illness.

Now, they did tell you they're not going to have overnight care, but in the definition it says a hospital is distinguished from a medical center by the provision of overnight care. So a medical center, by its definition, does not have overnight care, but it performs all the other functions of the hospital, and it must be licensed, and they've told you we're -- we have to license this facility, and they're going to piggyback off of the JFK -- their JFK license for that.

So it's clearly not an office building. It's clearly a medical center because it's required to be licensed. That's a different use than going to your doctor's office and ask him to examine your damaged rotator cuff from playing too much softball on the weekend.

The emergency medical service clinic or medical center is not a use authorized by the MUPD. The normal function of a variance is to permit a change in building restrictions, but not change in use classifications.

Should the Zoning Commission approve this variance, it's going to be granting a use variance because it's going to be changing the use of that property which is contrary to longstanding Florida Supreme Court precedent.

Back in 1957 the Florida Supreme Court ruled that while Zoning Commissions, such as y'all, could grant variances to height, setbacks, side lot and other problems unique to a parcel, use variances are improper. That case stands as good law today.

The court also stated that the Zoning Commission does not have the authority to amend a zoning ordinance by authorizing a particular use of the property which has not been previously approved by the legislative body, in this case, the Board of County Commissioners.

Such action by the Zoning Commission, if you were to approve this use variance, would result in your exercising undelegated legislative authority.

Consequently, the application does not meet this standard.

And lastly, number seven, granting the variance would be injurious to the adjacent residential area and otherwise detrimental to the public welfare.

And I think you've heard from the residents their concerns about this, and as I previously stated, the law, when applied to these facts, is that the Grove and Barbara and these residents and others are entitled to rely upon the existing hours of operation that were codified in the ULDC and which were made a condition to the approval of this MUPD.

In conclusion, the usual purpose of a variance is to permit a change in building restrictions, such as height and setback but not for uses.

There's no competent substantial evidence before you that a variance is necessary for this applicant to make a reasonable use of its property. In fact, the evidence is directly contrary to that.

They have a reasonable use of the property. That reasonable use is 115,000 square feet of professional office -- I'm sorry, medical office.

The denial of the variance would not result in their being no reasonable use of the land. On the other hand, the approval would confer upon this applicant a privilege which is denied to other commercial property owners who are adjacent to residential because their hours of operation would remain restricted.

In sum, this application clearly doesn't meet the legal test for a variance, and I know that there have been many other applications that perhaps haven't met the legal test for a variance because it's a very rigorous test, and it almost -- variance approvals are almost never affirmed by the Appellate Court unless they have a unique factual circumstance, as I described previously, where you have a triangular-shaped lot.

Before I sit down, I wanted to make sure as part of the record that the letter -- the two letters dated April 30, 2008, that I sent, one of which I hand delivered to Jon McGill [sic] today, as well as my April 29th letter are part of your record.

COMMISSIONER KAPLAN: I so move, Mr. Chairman, we accept the both letters.

MR. BAIRD: Three letters.

CHAIRMAN BARBIERI: Motion made by Commissioner Kaplan.

COMMISSIONER ARMITAGE: Second.

CHAIRMAN BARBIERI: Second by Commissioner Armitage.

Any discussion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: Motion carries, 7-0.

COMMISSIONER KAPLAN: Madam --

CHAIRMAN BARBIERI: I want to ask first.

I want to ask the County Attorney to please give us your opinion as to whether or not the granting of this variance would be giving a use variance.

Those are -- those are the two letters, Jon. I'm sorry. These slipped off.

MR. BANKS: No. The change in hours of operation of a facility would not be a -- would not be a use variance.

COMMISSIONER KAPLAN: Mr. Chairman, now we heard the attorney's opinion, I am --

CHAIRMAN BARBIERI: The court reporter has asked for the County Attorney to repeat that.

MR. BANKS: I said the change in hours of operation would not be a use variance.

CHAIRMAN BARBIERI: Commissioner Kaplan.

COMMISSIONER KAPLAN: While I am in favor of additional medical facilities for the benefit of our residents, regrettably, I cannot support this application.

I find that it does not conform to the standards set forth in Article 2, Section 2.D.3.

The only thing that we have before us is whether or not we can waive or vary the requirements of the commercial use adjacent to residential shall not commence business activities prior to 6:00 a.m. or continuing business activities later than 11:00 p.m.

I have found no evidence that will permit that article to be violated. I find that the application is not in harmony with the existing community, and it does not conform to its character of the area, and, accordingly, I cannot support this application.

AUDIENCE: (Applause)

CHAIRMAN BARBIERI: Please, please, please. Let's have no --

MR. BROPHY: Mr. Chair.

CHAIRMAN BARBIERI: I'd like to give the petitioner the opportunity to respond to Mr. Baird's comments.

MR. BROPHY: Thank you.

Actually, yeah, we'd like to respond basically. We appreciate the comments of the residents. We've heard them before, met them -- with them quite a few times. We're hearing Mr. Baird's comments really for the first time today. We did receive the letter yesterday.

But I mean in terms, I guess, of the use, I mean I don't think there's any question in terms of the medical use is indeed a medical office.

I mean Mr. Baird did recite, I think, the definition of hospital and medical center, but medical office also states that it's an establishment where patients who are not lodged overnight are admitted for examination or treatment by persons practicing any form of

healing or health-building services, the practice of which is lawful in the State of Florida, which perfectly meets the intent.

Staff has already confirmed that. So, obviously, this still falls within the medical office which is permitted under the MUPD zoning district, and we do have the approval for it.

In terms of the, I guess the representation of the variance, I know Mr. Baird's résumé is impressive; however, he doesn't work for the County. He works for Bethesda Hospital, who is the competitor of this tenant.

Staff feels that we have met every criteria required, and we agree with them. It's not something where we have just simply submitted a document and we get here. We go through a process. We submit the documents. They're reviewed, and they're approved, and that's how we're here.

We meet everything in terms of the zoning, the variance, the traffic, everything we've talked about.

Obviously -- or else we wouldn't have the recommendation of approval from the staff.

A couple of clarifications I just wanted to make. COBWRA had mentioned that the access off Orchid Grove Trail would be -- would have an exit out for ambulances, and that was actually resolved. That's going to be incorrect. That's completely closed to all vehicles between the hours of 9:00 p.m. and 6:00 a.m.

We understand that that's one of the biggest problems that they see with the project is the amount of traffic coming in late at night, and I can explain a little bit where the difference in numbers comes from.

The 0.6 or 0.8 which I quoted before per hour at the existing JFK really isn't a result of the number of people coming in. It's the result of what's being used in the hospital.

What we have is a stand-alone emergency room with full labs and full ER-trained doctors.

In a hospital you have an entire hospital along with an emergency room utilizing those labs and those scanners.

So the reason why you're sitting there waiting isn't because -- it may be because of a doctor, it may be because there's a long line, but it also could be because the internal function of that hospital.

That hospital -- they're all using the same facilities. Here you have a stand-alone facility with all their own labs and scanners, and that's why there's the benefit for the area.

It has -- it's going to reduce the amount of time that people are going to be sitting in those emergency rooms. There's been precedent set by the four that are existing that they're extremely lower than what a current wait at a hospital is.

In terms of the land use change, I just want to clarify that the land use change was --

you know, occurred in '96, probably about the same time that the Groves was going up.

So, you know, this has been approved for a commercial development. While it sat there vacant for a long time, it's been approved for a commercial development for a very long time, as well.

The conditions of approval, and I guess the request for the postponement, and one of the reasons why we didn't want to postpone this again, like I said, we've already postponed a month based on meetings with the residents is because we got a clear understanding of they don't want it, and we understood it.

They under -- they -- I think they like the concept. I think they got the concept, but just not here, somewhere else, and we understood that, but we also understood what they said about the issues, and that was the traffic and the security, the lighting, and we issued mitigation measures to them as -- as a way of cutting down on the impact that the use is going to have.

Now, postponing I don't think is going to change a thing because at the time, you know, they weren't going to accept whatever we did.

So I think that's why we're here today. It has nothing to do with us not being responsive to the community. I just want to make sure of that.

The gates, just want to clarify that the gates would be -- the gates that would close Orchid Grove Trail would be attached to the security wall, security perimeter walls.

These wouldn't be the one-armed bandits that we talked about. These would be full sliding security gates that go across the entranceway. So it'd be completely secure.

And in terms of the, I guess the position of Bethesda, the sole reason for Bethesda and the hospital going out on Boynton Beach Boulevard and 441 has nothing to do with the hospital. It has everything to do with an emergency room.

There's an -- there's -- there is no real need for the additional 80 beds. It really had nothing to do with that, and the West Boynton community voted for that hospital based on an emergency room.

We just want to make it clear that there's nothing wrong with more access to healthcare. Whether there's one two miles away, what's it matter?

Obviously, they're going to be waiting because they are going to be a full hospital. They're going to have to share their facilities. This one is not.

If I had my choice, I think I'd rather go to this one and not have to wait.

MR. BANKS: I think he's now testifying regarding things he's not an expert about.

If you were going to conduct a hearing about --

MR. BROPHY: Fine.

MR. BANKS: -- which is better, a freestanding emergency room or not, or whether there are going to be waits at a hospital which hasn't been built, but it's clearly -- he's just -- you're just arguing, as opposed to offering a summation.

MR. BROPHY: I do it well, but --

AUDIENCE: (Applauding)

CHAIRMAN BARBIERI: Please stop. Please stop that.

MR. BROPHY: That -- I mean that really concludes -- I mean in terms of zoning, like I said, we have everything in place. We have all the uses. We have the traffic. We have the staff approval.

So in terms of zoning I think it's -- the issue is done.

But we have experts here. If there's specific questions from the commissioners in terms of the use and the medical use, we have them to answer your questions.

Thank you.

CHAIRMAN BARBIERI: Thank you.

COMMISSIONER HYMAN: Does Tom have anything else, otherwise you should --

CHAIRMAN BARBIERI: Do you have anything else?

MR. BAIRD: I once stayed in a Holiday Inn, and consequently I'm an expert in medical facilities, also.

In all seriousness, the distinction that you need to focus on is that a medical office does not require licensing.

This facility that they are proposing falls into the definition of medical center which requires licensing.

The evidence that's been presented to you is they are or will be obtaining a license for this facility. It's clearly a different use than a medical office.

Thank you.

CHAIRMAN BARBIERI: Mr. Banks, I want you to respond, please, if you would, on that.

AUDIENCE: (Applause)

COMMISSIONER HYMAN: He's got --

CHAIRMAN BARBIERI: Would you please stop applauding. I will clear the room.

I understand that you don't want this project. We understand your feelings, but we want to get through this project.

Staff has not had a chance to go to lunch.

It's already two -- 2:00 o'clock.

UNIDENTIFIED SPEAKER: Neither have we.

CHAIRMAN BARBIERI: Neither have you, that's correct, but these people work for a living. They're up here for the day because they work.

So let's just get through this project. Stop applauding.

County Attorney.

MR. ROGERS: He decided to leave. Let's go to lunch.

MR. BANKS: Can we have 10 minutes so I can talk to staff?

CHAIRMAN BARBIERI: We're going to take a five-minute break.

(Whereupon, a short break was taken in the proceedings.)

CHAIRMAN BARBIERI: Okay. Let's get started. Let's get started. All right.

Comments from the Commissioners.
Commissioner Brumfield.

COMMISSIONER BRUMFIELD: I have a question for staff with regard to Article 2, Section 2.D.3.G.2, the Variance Standards, your recommendation is that the project meets the criteria listed by the statute.

Is your opinion of that still the same and why?

MR. Mac GILLIS: Yes, it'd be still the same.

COMMISSIONER BRUMFIELD: And why? While I understand your analysis, I've also heard the argument of Mr. Baird --

MR. Mac GILLIS: And we can go through the report if you'd like.

COMMISSIONER BRUMFIELD: -- and in response to that what would you say?

MR. Mac GILLIS: Under special circumstances -- I assume you don't want me to go through the one for the landscaping.

COMMISSIONER HYMAN: Do it -- no, just the one for 24 hours.

CHAIRMAN BARBIERI: Yes.

MR. Mac GILLIS: Under special circumstances related to the lot, existing -- the lot that the staff report is stating that the shape of the parcel of land are not applicable to other parcels of land in the district pursuant to the code, the intent of the code provision on the hours of operation to provide maximum protection to residents and are adjacent to the commercial uses; however, the code did not contemplate every use, it provides special needs based on the proposed site layout.

Building A will be the only building designated for the proposed 24-hour emergency service clinic which will serve as a triage.

COMMISSIONER HYMAN: I mean the problem is that there's this 24-hour provision in the code; right?

MR. Mac GILLIS: Correct.

COMMISSIONER HYMAN: And isn't this going to be applicable to like everyone, and aren't we going to need to change the code?

MR. Mac GILLIS: Actually, we are actually in this set of amendments to the Unified Land Development Code are looking at this section of the code to change the hours of operation, to clarify them.

They've been in the code probably for 30 years, and we -- generally Code Enforcement responds to complaints about hours of operation on an as-based need, when somebody contacts us that

somebody's operating next to a residential, and there's noise, like a nightclub or something.

Other than that, generally there is no problem.

COMMISSIONER HYMAN: So there are lots of other uses in that area that are 24 hours?

MR. Mac GILLIS: We could -- this provision only applies when there's a commercial use adjacent to residential, and historically, unless Code Enforcement gets a complaint because of the number of projects that are abutting residential that didn't apply for variances and have changed out uses in the -- in a planned development and are operating out there now, that they -- there could be a problem.

So we've made it clear to everyone now when they're coming in now for an MUPD and they think they're going to be exceeding the hours of operation that are stated in the commercial provisions of the code, they need to apply for a variance for it, and at that time we look at the unique characteristics of the site and its setbacks, the buildings and from the property line and whether there's structures in between the structure that's coming in for the variances, and there's additional landscaping and other site features that would mitigate the need for that limitation on the hours.

So this one where the building is located down along the main road with the proposed conditions of approval, staff felt that it did meet the first criteria.

COMMISSIONER BRUMFIELD: And would you continue on with the next?

MR. Mac GILLIS: Yeah. Second criteria is the special conditions are not the result of the applicant -- the special conditions and conditions do not result from the actions of the applicant. However the applicant indicates that due to limited hours of operation for the medical office building, the -- of the existing development, a variance is being requested for the hours of operation requirements.

The applicant also indicates that an emergency medical center with 24-hour use is needed in the West Boynton area as existing emergency centers are located over 10 miles away.

There is no service that is conveniently located in West Boynton community.

In studying the Boynton Corridor and other major roadways in the area, it can be seen that the most part of this is residential suburban area.

Criteria number three, will the granting of the variance confer any special privileges on the applicant. Pursuant to the proposed layout the proposed Building A, first floor only, will be the only building designated as located to the -- it is located in the southern part of the site away from the residential and meeting the intent of the code provision, which is to protect adjacent residential properties and may be adjacent to

commercial zoned properties.

The code does not anticipate uses such as the -- such as emergency medical clinics. The request is the result from the applicant; however, the structure to be utilized will be approximately 550 feet from the nearest residential property to the north and 370 feet from the nearest residential property to the east.

So it was felt that they -- even though they didn't comply with this, with the true -- the literal intent through the conditions of approval and limiting to that building, that they would meet it.

Four, literal interpretation and enforcement of the terms of the code would deprive the applicant of rights commonly enjoyed by other parcels of land.

Yes, the literal enforcement of the code's restrictive hours of operation would deprive the applicant of the rights limiting the activities on the site during the hours from 11:00 to 6:00 a.m.

Due to the site's proximity to a residential district the applicant is restricted by code provisions that is designed to protect residential areas from any negative impact of commercial activities during these hours.

The restriction, if literally enforced, will result in the applicant reverting to the current approval.

Is this the -- is this the minimum necessary variance? Yes, the granting of this variance is the minimum variance required to meet the applicant's request.

The applicant indicates that the variance for 24 hours emergency service clinic would be less intrusive than a typical emergency room service used with -- used, and with the location on the site it can provide the medical attention needed by those who live within the West Boynton area.

Criteria number six, would granting the variance be consistent with the Comp Plan and ULDC?

Yes, granting the variance would not adversely affect the intent of the purpose of the Comp Plan.

This is zoned commercial, this commercial land use for commercial high office.

In addition, the functions of the 24-hour service that will be provided to customers will be conducted within Building A only, which is located to the most southernmost portion of the site, which would mitigate any negative impacts of the function of the residential area -- from the function of the residential area.

And, finally, number seven, would granting the variance would not be injurious to the area.

Granting of the variance -- okay. Granting the variance will not be injurious to the area involved, otherwise, detrimental to the public with staff's opinion with the recommended conditions of approval.

COMMISSIONER BRUMFIELD: What -- what my intent was, Mr. Mac Gillis, was to give you an opportunity to rebut what Mr. Baird had indicated both in his letter and his presentation.

What you've done is essentially just iterate what you've already proposed in writing, which is what he responded to to begin with.

MR. Mac GILLIS: Unfortunately, this letter I just got when you got it here, so I don't think it's fair for me to have to go through this 'cause there's -- he's in here indicating that this use is as a use variance, which I disagree as the Zoning Director, but I can't here within this time go through everything he's stated in this thing.

There's obviously been hours of research and legal input on this that I am not comfortable here making, you know, determination to you --

COMMISSIONER BRUMFIELD: I understand.

COMMISSIONER HYMAN: Can I say something?

CHAIRMAN BARBIERI: Commissioner Hyman.

COMMISSIONER HYMAN: I think, you know, you've seen that we are considering very seriously the presentations that have been made, both from the public, as well as from Tom Baird, who I respect to no end.

But I don't think it's fair for staff to be put on the spot to have to address everything that, you know, Tom has presented to us today, and there's a lot of stuff.

So I'm going to make a motion to postpone this item to next month, to -- next meeting is June what, 5th? I'm going to move to postpone this to the June 5th meeting.

It would give staff sufficient time to address all of these issues and --

COMMISSIONER DAVIS: Second.

COMMISSIONER HYMAN: -- able to advise us accordingly.

CHAIRMAN BARBIERI: All right. The motion was made by Commissioner Hyman, seconded by Commissioner Davis.

Is there any discussion?

COMMISSIONER KAPLAN: Yes.

CHAIRMAN BARBIERI: Commissioner Kaplan.

COMMISSIONER KAPLAN: Mr. Chairman, as usual, I'm opposed to the adjournment --

COMMISSIONER HYMAN: Adjournment?

COMMISSIONER KAPLAN: -- for the simple reason that every time the public speaks and somebody wants time to reconsider defeats the whole purpose of the Zoning Commission to have the members of the public be heard and for us to make a decision.

I don't think that it's fair when somebody comes to oppose a petition, that now we postpone it to another time to give the applicant or staff time to consider it.

Between now and the BCC staff should have ample time to review all the issues and give BCC --

COMMISSIONER HYMAN: It's a variance,

Allen.

MR. BANKS: This doesn't go to the BCC.

COMMISSIONER KAPLAN: Doesn't?

MR. BANKS: Doesn't go to the BCC.

COMMISSIONER HYMAN: It's a variance.

CHAIRMAN BARBIERI: We're the final decision.

COMMISSIONER KAPLAN: You're absolutely correct. This does not go to BCC, so I have to withdraw that statement.

Notwithstanding that, that BCC doesn't act upon the variance and we do, I don't think it's in the benefit to the public to put this off again for time to rebut the evidence that has been presented, and for that reason I will oppose a postponement.

I think this Commission has heard enough evidence, pro and con, to make its decision at this particular time.

Thank you.

COMMISSIONER BOWMAN: Mr. Chair, I'll concur with Commissioner Kaplan, and I will oppose a postponement of this matter.

CHAIRMAN BARBIERI: Okay.

COMMISSIONER HYMAN: What did he say?

CHAIRMAN BARBIERI: He concurs with Commissioner Kaplan.

COMMISSIONER BRUMFIELD: Well, it -- with regard to the postponement, I think what we need is to make a decision based on evidence and facts.

I know this is a sensitive issue to both sides. As COBWRA representative pointed out, it affects other people in this area, other than the people who are here.

I am not neglecting or not seeing the people that are here as well. My concerns are with you, as well. I want to have an opportunity to make my decision based on evidence and not on a feeling one way or another.

CHAIRMAN BARBIERI: All right.

Anybody -- any other commissioners?

(No response)

CHAIRMAN BARBIERI: I -- if we do postpone, I want to apologize to all of you that spent the day here 'cause you'll probably want to come back; however, I believe, as Commissioner Brumfield says, that we have some conflicting information, and we're not sure -- we'd like to give staff the opportunity to advise us in the recommendations.

The letter from Mr. Baird was submitted to staff yesterday, not giving staff adequate time to respond.

We do take the recommendations of staff when we make our decisions, and they haven't had the opportunity to give us recommendations based on Mr. Baird's letter, so I would support a postponement, and I'll take a vote on the motion at this point.

COMMISSIONER KAPLAN: Mr. Chairman, if I may, my opinion for not approving this is not based upon Mr. Baird's letter. It is based upon

the evidence that was presented to us by the applicant and by the residents who opposed it.

There's sufficient evidence for me to make a decision, which I have made, that at this point the applicant has not conformed to all of the code provisions. That has nothing to do with the letter submitted.

CHAIRMAN BARBIERI: All right. We have a -- do we have a second on Commissioner Hyman's motion?

COMMISSIONER BRUMFIELD: Second.

CHAIRMAN BARBIERI: All right. All those in favor of a 30-day postponement please raise your hands.

COMMISSIONER HYMAN: (Raises hand)

COMMISSIONER BRUMFIELD: (Raises hand)

CHAIRMAN BARBIERI: (Raises hand)

Commissioner Brumfield, Commissioner Hyman. I'm in favor.

Those opposed.

COMMISSIONER ARMITAGE: (Raises hand)

COMMISSIONER BOWMAN: (Raises hand)

COMMISSIONER DAVIS: (Raises hand)

COMMISSIONER KAPLAN: (Raises hand)

CHAIRMAN BARBIERI: Commissioner Armitage, Bowman, Davis and Commissioner Kaplan.

The motion fails. That's what I said, motion fails, 3-4.

The Chair will entertain another motion.

Mr. Kaplan, are you making a motion? Turn your mic on, please.

COMMISSIONER KAPLAN: Oh. Thank you.

As soon as I can find the -- I'll make a motion to deny the variance as to the 24-hour provision.

This is not the variance of the second one for the landscaping. This is only the first one as to the 24-hour provision.

CHAIRMAN BARBIERI: Do we have a second?

COMMISSIONER BOWMAN: I'll second.

CHAIRMAN BARBIERI: Commissioner Bowman.

COMMISSIONER HYMAN: Under discussion.

CHAIRMAN BARBIERI: Commissioner Hyman.

MR. BANKS: I would also say if the Board wants -- you need some -- some findings to support the denial.

COMMISSIONER HYMAN: Under discussion, you know, when I first saw this petition, I said oh, my goodness, I can't imagine anybody being against an emergency medical facility outside their door.

One of the greatest things about my neighborhood, and I live in West Palm, is that I'm fairly close to the hospital, to Good Sam, and if I was closer, it would even be better, 'cause I don't know how many of you have ever needed a hospital or an emergency facility in the middle of the night, but you know to have one close by is a positive thing.

And I venture to say if this project does get built, that, unfortunately, I don't look -- you know, I don't want each of you to have to use it, but most likely, you know, many of you will

end up having to use it.

And it is unfortunate, also, that the only -- well, I won't say the only, but tremendous amount of credible evidence that we heard today did come from a competitor, and Tom Baird's probably one of the best lawyers I know, and I'm sure -- I am 100 percent sure that Tom could have stood up here and presented just incredible an argument in favor of this project.

But because he's representing the hospital that's a competitor, obviously he's presenting the negative side.

So I am troubled that for a use that seems -- is so logical, it's something that is so needed in the area, and we've had enough testimony to hear that, we need to have more medical facilities.

I can't imagine anybody here saying that we don't need more medical facilities, and I'm -- and I think it's unfortunate -- I am very dismayed to hear talk about well, it's got profitable and this and that and the competition, 'cause there are human lives at stake. There are our lives at stake.

And so I'm supporting this project, and I would -- if we're forced to make a decision today, then I am going to vote in favor, or I'm going to vote against the current motion.

COMMISSIONER KAPLAN: I don't think that we're here to listen to the harp of what we need. Need is one thing.

Whether or not the petitioner conforms to the code is our function as Commissioners, and whether or not there's a sufficient basis to grant the variance, which I find that the conditions of Article 2, Section 2.D.3.G.2 were not met, and that's based upon the testimony of the residents in the area.

And based upon that -- and I will -- said in my preference before that I'm in favor of additional medical facilities. That is not the issue.

The issue here is has there been sufficient evidence produced to grant the variance by this Commission. I say there has not, and that does not mean I'm not in favor of additional medical facilities. I am. But I don't think it's the right time, place or location.

We have a duty not only to protect an applicant, we have the duty to protect the residents, and that's why we have this hearing, a public hearing to hear the contrary views.

And based upon that I must regrettably, and I say that very honestly, I regrettably have to oppose this, although I would love to see an -- additional emergency facilities throughout the County.

CHAIRMAN BARBIERI: Anybody else?

(No response)

CHAIRMAN BARBIERI: All right.

Those in favor of Commissioner Kaplan's motion, please raise your hands.

COMMISSIONER KAPLAN: (Raises hand)
COMMISSIONER BOWMAN: (Raises hand)
COMMISSIONER ARMITAGE: (Raises hand)
COMMISSIONER DAVIS: (Raises hand)
CHAIRMAN BARBIERI: Commissioner Bowman,

Commissioner Armitage, Commissioner Davis,
Commissioner Kaplan.

Those opposed.

COMMISSIONER HYMAN: (Raises hand)
COMMISSIONER BRUMFIELD: (Raises hand)
CHAIRMAN BARBIERI: (Raises hand)

Commissioner Hyman, Commissioner Brumfield, and I'm going to side with the opposition. I'm opposed to the motion.

MR. BANKS: Okay. And that's based on failing to meet all -- any of the criteria for a variance.

COMMISSIONER KAPLAN: That is correct.

COMMISSIONER HYMAN: Let the person making the motion --

COMMISSIONER KAPLAN: Commissioner Kaplan, you want to put that on the record, please, to --

MR. BANKS: I think he -- he said that. I was just reiterating.

COMMISSIONER KAPLAN: I said it. It's on the record.

CHAIRMAN BARBIERI: All right.

All right. The motion carries, and the variance is denied.

AUDIENCE: (Applause)

MR. CHOBAN: You have one more variance. You have another variance.

MR. CHOBAN: They didn't finish.

CHAIRMAN BARBIERI: Staff.

If you're going to exit, would you exit quietly, please, 'cause we're not finished. Thank you.

Thank you all for coming. We appreciate your input.

MR. Mac GILLIS: Would the -- could I ask, the motion on that last item, was it to deny both the variances or just --

CHAIRMAN BARBIERI: Oh. I'm sorry. There's another --

MR. BANKS: To deny the one variance.

MR. Mac GILLIS: Okay. So the motion was --

MR. BANKS: So you -- oh, there's still a variance on --

CHAIRMAN BARBIERI: Okay. You making a motion on the second? Commissioner Kaplan?

COMMISSIONER KAPLAN: On the second motion -- on the second issue I will listen to a motion made by any other members of the Commission.

COMMISSIONER HYMAN: All right. I'm going to move approval.

This is with regards to the landscaping?

MR. Mac GILLIS: The allowing a wall to be adjacent to ficus trees.

COMMISSIONER HYMAN: Make a motion to approve.

CHAIRMAN BARBIERI: Do we have a second on that motion?

COMMISSIONER KAPLAN: I'll even second it.

CHAIRMAN BARBIERI: All right. Is there any discussion on that motion?

(No response)

CHAIRMAN BARBIERI: All in favor.

COMMISSIONERS: Aye.

CHAIRMAN BARBIERI: Opposed.

(No response)

CHAIRMAN BARBIERI: That one carries 7-0. Thank you.

CHAIRMAN BARBIERI: Staff, you finished? You have something else?

MR. Mac GILLIS: I'm just going to quickly go through this annual report.

CHAIRMAN BARBIERI: Commissioner Kaplan -- Commissioner Kaplan, we're not finished.

Ladies and gentlemen, this Commission has not finished business, so please quietly leave if you wouldn't mind.

MR. Mac GILLIS: The ULDC requires us to send an annual report for every advisory board to the Board of County Commissioners. We've had this on your agenda for several months now, and so I'm just going to take a few minutes highlighting the main points of it.

We will send this on to the Board of County Commissioners as required by the code.

So the Pages 2 through 4 are just administrative stuff for your information on who's appointed to the board, the critical hearing dates.

And Page 4, if you could please look that over, I don't want to send it down if there's any errors on the attendance list because the code is clear that -- how many meetings you have to attend and if any absences are counted towards -- yes.

COMMISSIONER ARMITAGE: There's not -- I didn't see an error on four, but I saw an error on Page 2.

MR. Mac GILLIS: Two?

COMMISSIONER ARMITAGE: There's no longer a vacancy.

MR. Mac GILLIS: Okay. I think this thing has been so long --

COMMISSIONER HYMAN: Right.

MR. Mac GILLIS: Yeah, we'll fix that.

COMMISSIONER HYMAN: You can take Dufresne off of the chart.

MR. Mac GILLIS: Yeah.

COMMISSIONER HYMAN: You know --

MR. Mac GILLIS: This report, just so you know, was for 2007.

COMMISSIONER HYMAN: I know. It's old.

MR. Mac GILLIS: So, unfortunately, it's -- it's outdated.

Page 5 through 8, once again, that's just -- there's the new commissioner -- we just recently met with Joanne Davis and Commissioner Zucaro, so the rest of you have been on here for several years, so there's no need to go through that, but it's just the organizational chart of the Zoning Division and who prepare the packet for you with the input from all the other agencies and the role of the Commissioners.

The main thing on this is, starting on Page 9, is just to update you on some of the hot topics that are -- that affect this Board.

Page 9, just that last year you approved 278 applications. We didn't really break those down, but they're rezonings, condition uses, requested uses, development order amendments and your new role is reviewing Type II variances.

Perhaps based on what just happened with that last item we may want to have a workshop on just variances.

Urban -- the URA area update. I'll -- Isaac will give you just a quick update on where the Planning Division is with that.

MR. HOYOS: Yes. As Jon indicated previously in the hearing today, this past Monday the Board of County Commissioners transmitted to the Department of Community Affairs a series of Comprehensive Plan amendments that would enable the form-base code and would create a new land use designations for the URA, which are based on the new urbanism concepts.

And in relation to that we are -- the division has been working on the form-base code for the two priority areas along Congress Avenue and Military Trail, and we are working closely with the Zoning Division in the preparation of code amendments for infill land and redevelopment, and we have been continuing working on a public outreach, having monthly meetings with interested parties.

We've been coordinating with the Village of Palm Springs for the implementation of the portion of the URA and continue working on the URA stormwater alternatives.

So that's basically it.

MR. Mac GILLIS: Maryann.

MS. KWOK: Okay. The infill redevelopment, we just started the infill redevelopment project in January, 2008.

The goal of this infill redevelopment is to identify existing obstacles to the, you know, to projects for redevelopment, and the -- we're going to come up with a strategy, and the three main goals of the strategy is to consolidate and simplify the current ULDC regulations and develop

alternative redevelopment regulations and then mitigate minor non-conformities to address redevelopment needs of existing sites.

We have a task force, and we meet every -- we meet twice a month, the first and the third Wednesday of the month, and this is our fourth meeting, and it happens -- it occurs first, as I said, first and third Wednesdays of the month at 2:00 to 4:00 p.m., and we try to get input from the industry and interested parties.

COMMISSIONER HYMAN: Could I ask a question?

MS. KWOK: Right.

COMMISSIONER HYMAN: And actually this was -- came to mind because Joanne bringing her computer.

I need the paper, but can't we recycle this so that our packet goes to the County Commission so you don't have to do it again, 'cause isn't it basically the same packet?

No, it's not. On the stuff that goes to them it's not the same?

MS. KWOK: We do a lot of update, like the revised conditions of approval, and usually we do a summary of the Zoning Commission hearing, you know, your recommendations, what was discussed.

So we may not be able to use -- re-use this.

COMMISSIONER HYMAN: Stuff like this?

MS. KWOK: Yes, we -- that we can do that, and the graphics, too, we can re-use the graphics.

MR. Mac GILLIS: The TDR, just to update you on that, last year there were nine applications approved for a total of 326 units.

The TDR program -- usually the cost of the unit right now is \$50,000. Annually the Planning Division Director makes a recommendation to the Planning -- to the Board of County Commissioners whether or not to increase that amount.

That price of 50,000 has not been increased this year, and if you are a workforce housing unit, the TDR can be approved at a dollar by the BCC.

So annually we will be presenting a -- actually, a report to the Board of County Commissioners at the end of this month on the TDR program.

And then we have the workforce housing. Barbara will present this.

MS. ALTERMAN: And I think we've been through the workforce housing quite a few times.

What's in the booklet actually is a copy of the ordinance that adopted the workforce housing program and the ULDC amendments that implement it.

We are going back to the Board of County Commissioners on a May workshop to update the program. Our anticipation is twofold.

Number one, we're going to eliminate the upper range, that 100 to 150 range of the workforce housing. It's just basically something that we had added as a compromise to industry when

we were going through the process of adopting the amendments, and it's not realistic, given the day -- the level of housing today.

And Gold Coast Builders had written a letter to the Board of County Commissioners asking that some code amendments be done to make these workforce housing projects be more affordable.

Staff has felt that we done -- we had done a lot when we originally implemented the ordinance in terms of eliminating a lot of the kinds of frills, if you will, that were in, giving breaks on buffers and things like that, but we're going back and looking at some of those recommendations.

Some of the recommendations we're going to recommend to the Board that they not begin to implement.

So that's kind of what we'll be doing in May to the Board of County Commissioners.

If anyone wants to attend, it's the 9:30 workshop on May 13th.

CHAIRMAN BARBIERI: Barb, can I ask a question?

MS. ALTERMAN: Sure.

CHAIRMAN BARBIERI: So what's the upper end of -- what is the dollar value of a home that would still be considered a workforce housing unit?

MS. ALTERMAN: I think it's in here. Let's see. If not, it's in the staff reports.

It's about three -- it was about 300,000 -- now, these were recommended -- again, remember, we were -- when we originally did this workforce housing ordinance, it was kind of at the height of the building industry where prices were continually going up and up and up.

And that's why we're going to go back, and we're going to be looking at that again, particularly taking out that upper end.

What we're going to eliminate or propose that the Board eliminate is the middle income, which is 121 to 150 percent of the median family income, and that sales price goes up to about 100 -- \$304,000.

So if you go back down to the moderate income, which is 100 to 120 percent, the top sales -- remember, these are maximums -- would be \$240,000.

CHAIRMAN BARBIERI: That seems to be more realistic with what a teacher or a fireman or policeman could afford, is --

MS. ALTERMAN: Absolutely.

CHAIRMAN BARBIERI: The other thing is what is the time period that it's deed-restricted? How many years is that?

MS. ALTERMAN: Twenty-five years, recurring. If it's sold before the 25 years, that deed restriction goes back into effect again for another 25 years.

CHAIRMAN BARBIERI: Another 25 years? Okay.

COURT REPORTER: I can't hear you.

COMMISSIONER HYMAN: Do I need to be on

the record?

CHAIRMAN BARBIERI: Yes.

COMMISSIONER HYMAN: We're still on the record?

CHAIRMAN BARBIERI: Yes, we are.

COMMISSIONER HYMAN: Just whoever's not here should, you know, maybe staff can go over this stuff with them 'cause there's been some -- there were some questions raised last time.

MS. ALTERMAN: Understand.

COMMISSIONER BOWMAN: And is there a cost of living adjustment in that?

MS. ALTERMAN: There is because it has to be -- what happens when a resale occurs, it needs to be sold to another qualified family.

Now, that qualified family, as the years go on and the cost of living go up, that would automatically go up --

MR. BANKS: It's based on --

MS. ALTERMAN: -- because your median family income --

MR. BANKS: Based on income. So if incomes go up, the price of the units go up --

MS. ALTERMAN: Based upon --

MR. BANKS: -- but if incomes go down, the price of the units would have to go down. So it works --

MS. ALTERMAN: And that's why we go back to --

MR. BANKS: -- both ways.

MS. ALTERMAN: -- the Board on an annual basis to update the annual -- the median family incomes, and these are based upon HUD guide -- HUD regulations.

CHAIRMAN BARBIERI: Okay.

MR. Mac GILLIS: Last two items, electronic Planning, Zoning and Building. This is just to update you both Planning and Zoning is fully automated on this new system.

The Department of Planning, Zoning and Building began implementing it about two years ago. It's historical database where all our -- anything related to the property control number goes in, and it allows us to give more information out to the public through our Websites and stuff and generate documents that are all merged with the similar data once it's put on.

So it's a -- it helps us also to create the GIS layers and all that stuff for mapping and stuff for the County, so -- I believe Engineering is -- you're on another system.

They're working on an e-permitting system for their platting process.

And the last item is just -- do you want to say something about it? No. Okay.

The last item is the -- just a -- it's the DRO Oversight Committee.

This committee was set up several years ago, was to give the agents and industry an opportunity to meet with the Zoning staff to go over the process so that we can work things out, rather than bringing them to you or down to the

BCC which processes code amendments and stuff like that.

So this committee meets several times quarterly, and we go over -- if it's like the Board of Adjustment. Eliminating that Board and bringing them to you, that was -- went through that, also.

CHAIRMAN BARBIERI: Mistake.

MR. Mac GILLIS: No, I don't think -- it's actually worked quite well for us, so there's a -- they're very instrumental in identifying good fixes for us, and it helps us having their input and making it smoother at the transition to implement them.

So that concludes the annual report.

CHAIRMAN BARBIERI: Can I just ask one thing? I don't know what the other members of the Commission feel, but can you separate on the agenda -- can we put all the variances first or second and all the other stuff so that we're not mixing the variances in with all the -- so we -- can we separate them so we know --

MR. BANKS: Right, except you have a lot of applications --

CHAIRMAN BARBIERI: I know.

MR. BANKS: -- that include variances.

CHAIRMAN BARBIERI: We have some that have both, but maybe we could set the ones that are definitely variances either first or last so --

MS. KWOK: We can hear -- we can sort that out. We can have the -- all the stand-alone variances heard first, and then anything that's tied -- your concurrent variances, we can group them separate.

CHAIRMAN BARBIERI: Okay. That'd be great. Be easier for us to keep track of them, whether we're going to get countermanded somewhere else or we're done.

COMMISSIONER HYMAN: And if you could put on the map --

MS. KWOK: Right.

COMMISSIONER HYMAN: -- you know, all the projects, not just the development order amendments. Put the variances on, also.

MS. KWOK: Okay.

COMMISSIONER HYMAN: We going to continue to use front and back?

MR. Mac GILLIS: Yes.

MS. KWOK: Yes.

COMMISSIONER HYMAN: That's fine.

MR. Mac GILLIS: Actually, I meant to bring that up.

If you don't have a problem with that --

CHAIRMAN BARBIERI: Yeah, that worked great.

COMMISSIONER HYMAN: Thank you for --

MR. Mac GILLIS: Okay.

COMMISSIONER HYMAN: -- starting the projects on the right side. It just makes a big difference.

CHAIRMAN BARBIERI: Yeah.

MR. Mac GILLIS: And we're -- at the Board

of -- bringing up the laptop thing there, I believe there's a task force set up for the Board of County Commissioners.

Several commissioners are actually working with Bob Weisman on using laptops and seeing if they can go paperless, so --

COMMISSIONER HYMAN: I don't think I could do it in a meeting, okay, but I would really love to be able to re-use, you know, the packets, or as much of the packets as we possibly can.

COMMISSIONER DAVIS: I have to tell you, this was the first time that I've done a meeting with a laptop and the first half hour was scary, because I couldn't find anything.

But after about a half hour, I figured out how to switch back and forth between the -- and I was working strictly off the Web. I had not downloaded this stuff onto my laptop. So I was working just off the wireless that's here. And after about a half hour, it was, you know, it was pretty easy. I was scrolling down and clicking over and keeping a couple of windows open.

But, you know, there's a learning curve, and I'm going to do it again. It seemed to work out all right after all.

COMMISSIONER HYMAN: Okay. No paper packet for you.

CHAIRMAN BARBIERI: Anybody else?

I'm sorry you guys didn't get lunch. If I would have adjourned for lunch I'm sure they would have thrown knives at me. So, I guess we're adjourned. Thank you.

(Whereupon, the meeting was adjourned at 2:05 p.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, Sophie M. Springer, Notary Public,
State of Florida at Large,

DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out; that I was authorized to and did report the proceedings and evidence adduced and offered in said hearing and that the foregoing and annexed pages, numbered 5 through 125, inclusive, comprise a true and correct transcription of the Zoning Commission hearing.

I FURTHER CERTIFY that I am not related to or employed by any of the parties or their counsel, nor have I any financial interest in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 4th day of June, 2008.

Sophie M. Springer, Notary Public